

EXHIBIT 1

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 BRAZOS POWER COOPERATIVE § CASE NO. 21-03863-ADV
INC., ET AL § HOUSTON, TEXAS

5 VS. §
6 § MONDAY,
§ OCTOBER 18, 2021

7 ELECTRIC RELIABILITY COUNCIL §
OF TEXAS, INC. § 12:00 P.M. TO 6:18 P.M.

8 MOTIONS TO DISMISS AND MOTIONS TO INTERVENE (VIA ZOOM)

9 BEFORE THE HONORABLE DAVID JONES
10 UNITED STATES BANKRUPTCY JUDGE

11
12 APPEARANCES: SEE NEXT PAGE

13
14 (Recorded via CourtSpeak)

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APPEARANCES (VIA ZOOM):

FOR THE BRAZOS ELECTRIC
POWER COOPERATIVE, INC:

EVERSHEDS SUTHERLAND
Lino Mendiola, III Esq.
600 Congress Avenue
Suite 2000
Austin, TX 78701
512-721-2720

O'MELVENY & MYERS, LLP
Louis Strubeck, Esq.
2501 North Harwood Street
Suite 1700
Dallas, TX 75201
972-630-1943

FOR ELECTRIC RELIABILITY
COUNCIL OF TEXAS:

MUNSCH HARDT
Jamil N. Alibhai, Esq.
Ross Parker, Esq.
500 N. Akard Street
Suite 3800
Dallas, TX 75201
214-855-7500

FOR PUBLIC UTILITY
COMMISSION OF TEXAS:

THE ATTORNEY GENERAL OF
TEXAS
Jason B. Binford, Esq.
300 W. 15th Street
Mail MC-008
Austin, TX 78701
512-475-4936

FOR OFFICIAL COMMITTEE OF
UNSECURED CREDITORS:

KRAMER LEVIN NAFTAILS &
FRANKEL, LLP
Thomas Mayer, Esq.
1177 Avenue of Americas
New York, NY 10036
212-715-9169

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APPEARANCES (CONT'D - VIA ZOOM):

FOR TENASKA POWER SERVICES: ROSS & SMITH, PC
 Judith Ross, Esq.
 700 North Pearl Street
 Suite 1610
 Dallas, TX 75201
 214-377-7879

FOR LOWER COLORADO RIVER
AUTHORITY: JACKSON WALKER, LLP
 Bruce Ruzinsky, Esq.
 1401 McKinney Street
 Suite 1900
 Houston, TX 77010
 713-752-4200

(Please also see Electronic Appearances.)

1 THE COURT: All right. Can we move on to the
2 Motions to Intervene?

3 MR. ALIBHAI: Your Honor, is there any way we
4 could take an even five-minute break?

5 THE COURT: Mr. Alibhai, of course. All you have
6 to do is ask. It is 4:04. Do you want to say 4:15?

7 MR. ALIBHAI: Sure.

8 THE COURT: All right. Then we'll reconvene at
9 4:15 with the Motions to Intervene.

10 MR. ALIBHAI: Thank you, Your Honor.

11 THE COURT: Of course.

12 (Recess taken from 4:04 p.m. to 4:15 p.m.)

13 AFTER RECESS

14 THE COURT: All right. Good afternoon, everyone.
15 Again the time is 4:15.

16 Let's see. We don't have Mr. Alibhai yet.

17 MR. PARKER: Hi, Your Honor. This is Ross Parker
18 here on behalf of ERCOT. I'm probably not going to do as
19 good a job as he did, sir.

20 THE COURT: Oh, no, my apologies, sorry. Just I
21 didn't know we affected the transition yet. All right.

22 Then all right, then with that, again, I didn't
23 know that there was pre-existing agreement. Is there an
24 agreement as to how we are to proceed on the Motions to
25 Intervene?

1 MR. PARKER: Yes, Your Honor. The parties have
2 conferred and we agree that market participants will go
3 first. That'll be Calpine, Exelon and the co-ops.

4 THE COURT: Sure. And so let me ask this,
5 Mr. Parker, I assume that you have seen the Agreed Order
6 with the member co-ops that was uploaded this afternoon,
7 with the restrictions that have been agreed to, does ERCOT
8 still oppose the intervention request by the member co-ops?

9 MR. PARKER: Yes, Your Honor. It does.

10 THE COURT: Okay. Fair enough. I just wanted to
11 understand.

12 All right. Then, I'm sorry, Mr. Strubeck, were
13 you leaning forward to speak?

14 MR. STRUBECK: I was, Your Honor. Are you able to
15 hear me?

16 THE COURT: Loud and clear.

17 MR. STRUBECK: All right, great. Your Honor, for
18 the Record, Louis Strubeck of O'Melveny Myers on behalf of
19 the Debtor.

20 I was just going to mention that I had agreed with
21 the sequencing that you just heard. I intended to do that
22 at the very beginning of the proceedings today and didn't
23 really have a chance 'cause -- but that's acceptable and so
24 I think that what we'll do, Judge, is just, as it has been
25 outlined, we'll go forward with the market participants and

1 that group and let them make their arguments, then we'll
2 have our opposition to it and then we can get into the
3 member piece of it, but as Your Honor mentioned, we did file
4 a stipulation earlier in the day and that has the support of
5 the Committee in addition to the Debtor insofar as allowing
6 the intervention with the restrictions of the member co-ops.

7 THE COURT: Got it.

8 All right. Then as between the market
9 participants, is there an agreement as to who's going first
10 or second or third or fourth? Mr. McKane?

11 MR. MCKANE: Your Honor, it's Mark McKane of
12 Kirkland and Ellis. Can you hear me okay?

13 THE COURT: Loud and clear, thank you. Good
14 afternoon.

15 MR. MCKANE: Fantastic.

16 Your Honor, for the Defendant Intervenors, I would
17 be prepared to handle the bulk of the argument. I know
18 Ms. Ross may have a point or two to make, as well. And so
19 we're prepared -- consistent with the Amended Agenda as was
20 filed, I believe, this morning, we're prepared to go first
21 presenting our arguments, if that's all right?

22 THE COURT: Of course. Do you need presented
23 control?

24 MR. MCKANE: I do for one demonstrative, Your
25 Honor, and you know me well enough to know that I'm probaby

1 not going to be taking control of that, so if you can find
2 Mr. Ester (phonetic), Mr. Michael Ester, he's going to put
3 forward one demonstrative for you. Then we're going to get
4 that off the screen and keep going.

5 THE COURT: All right. Let me fine Mr. Ester.

6 (Pause in the proceedings.)

7 THE COURT: All right. Evidently we've had that
8 flicker again. Let's wait just a moment to see if it comes
9 back.

10 (Pause in the proceedings.)

11 THE COURT: And it does. Very curious as to
12 what's causing that.

13 All right. Mr. Ester, you should have control.

14 You do. There's the demonstrative, Mr. Ester.

15 MR. MCKANE: And then before we get there with
16 that demonstrative -- you've got to take that off the screen
17 -- just for the Record, Your Honor, it's Mark McKane of
18 Kirkland & Ellis and I'm appearing on behalf of a
19 coordinated group of Defendant Intervenors. That includes
20 Calpine Corporation, Tenaska Power Services, NRG Energy,
21 MG Energy Marketing, Talen Energy Supply, Golds (phonetic)
22 for Elective Cooperative, the South Texas Electric
23 Cooperative, and NextEra Energy Market.

24 Your Honor, before we get into the heart of the
25 substance of the argument, I think it's appropriate for us

1 to establish the evidentiary record for the basis of our
2 exhibits.

3 Mr. Ester has led that charge for the Defendant
4 Intervenors and so I'll give the podium to him to move into
5 evidence the underlying materials.

6 THE COURT: Certainly.

7 Mr. Ester, good afternoon.

8 MR. ESTER: Good afternoon, Your Honor. Can you
9 hear me all right?

10 THE COURT: Loud and clear.

11 MR. ESTER: Thank you.

12 Your Honor, so we did file at Docket No. 94, a
13 Witness and Exhibit List on behalf of all of the Defendant
14 Intervenors. We did file that on Thursday, the 14th. We
15 met and conferred with the Debtors on Friday, the 15th, and
16 have reached agreement with respect to certain of these
17 exhibits. And we did coordinate with counsel for the
18 Committee over the weekend.

19 So with that, Your Honor, we would move into the
20 Record Dockets 94-1 through 94-16, which are Exhibits 1
21 through 16, respectively, with the following understanding
22 read into the Record, Your Honor, that the Exhibits 1
23 through 11, which is 94-1 through 94-11, are the Movant's
24 Proofs of Claim and these Proofs of Claim would be admitted
25 into the Record to establish that the claim was filed and

1 contend the claims asserted therein that the Court's
2 admission is not a concession by any party as to the
3 validity of the claim.

4 Your Honor, we would move 1 to 16 in. We also
5 then would move 94-23 through 94-32 into the Record, as
6 well.

7 THE COURT: All right. And who's taking the lead
8 for the Debtors?

9 MR. STRUBECK: I am, Your Honor, Louis Strubeck.

10 THE COURT: Ah, thank you, Mr. Strubeck.

11 And who is taking the lead for the Committee?

12 MR. MAYER: That would be me, Your Honor. I'm
13 sorry. My screen is off, but Tom Mayer will take the lead.

14 THE COURT: All right. Thank you.

15 Any objection to the admission as stated by
16 Mr. Ester?

17 MR. STRUBECK: None from the Debtor, Your Honor.

18 MS. ROSS: Your Honor, this is Judith Ross on
19 behalf of TPS, Tenaska Power Services Company.

20 THE COURT: Yes, ma'am.

21 MS. ROSS: The result of the declaration of a Mark
22 Holler (phonetic) that was submitted to this Court this
23 morning under Docket No. -- well, I had it here, Docket 114.

24 THE COURT: Yes, ma'am.

25 MS. ROSS: Mr. Holler was listed as a witness by

1 Tenaska Power Services. The Debtors asked that we put his
2 testimony into a declaration, which we have done. And
3 accordingly I'd ask that the Court accept his declaration at
4 this time.

5 THE COURT: All right. So I won't forget that,
6 but let me -- any -- Ms. Ross, any objection to the
7 admission of the Debtors -- I'm sorry, the -- what we'll
8 call the "market participants' exhibits"?

9 MS. ROSS: Absolutely not. I'm a market
10 participant.

11 THE COURT: I know. That's why I struggled with
12 that, so I was -- I couldn't figure out another name on the
13 spur of the moment.

14 Then without objection, I will exhibits identified
15 pursuant to the protocol at 94-1 through 94-16 with the
16 caveat put on the Record by Mr. Ester with respect to 94-1
17 through 94-11, also admit 94-23 through 94-32 without
18 objection.

19 Now with respect, Ms. Ross has moved to admit the
20 Declaration of Mr. Holler at 114. Any objection to the
21 admission of Mr. Holler's declaration?

22 MR. STRUBECK: No objection, Your Honor, on behalf
23 of the Debtors --

24 THE COURT: All right.

25 MR. STRUBECK: -- or the Debtor.

1 THE COURT: And the Committee?

2 MR. MAYER: No objection, Your Honor.

3 THE COURT: All right. Thank you.

4 Then Ms. Ross, it's --

5 MR. RUZINSKY: Your Honor?

6 THE COURT: Yes.

7 MR. RUZINSKY: Your Honor, this is Bruce Ruzinsky
8 for LCRA. We are a market participant, but I have -- but
9 not part of this group now. I do have a statement to make
10 after Mr. Ester's presentation and Ms. Ross' statement, but
11 I would like to ask at this time for the admission of our
12 single exhibits, which is LCRA's Amended Proof of Claim. It
13 appears at 97-1 and I'd ask that it be admitted for the same
14 purpose as the other Proofs of Claim.

15 THE COURT: All right. Any objection to the
16 admission of -- again, pursuant to the protocol, the exhibit
17 filed by the Lower Colorado River Authority, as 97-1?

18 MR. STRUBECK: No objection.

19 THE COURT: With the caveat that it's subject to
20 the limitation of 94-1 through 94-11.

21 All right. With that, Mr. Ruzinsky, it's
22 admitted.

23 (Exhibit 97-1 received in evidence.)

24 MR. RUZINSKY: Thank you, Your Honor.

25 MS. ROSS: Your Honor, can I let Mr. Holler go?

1 He's available if you want to swear him.

2 THE COURT: There was no objection to it, so no, I
3 only do that if somebody objects. So Mr. Holler is free to
4 go.

5 MS. ROSS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 All right. Mr. McKane?

8 MR. MCKANE: Thank you again, Your Honor.

9 Your Honor, if Mr. Ester could put up that one
10 demonstrative, I do want to address -- I am not going to
11 belabor and reiterate everything that we put in our papers,
12 which were extensive and those are at Docket No. 2861 and
13 89. I know you've read them, and I know you know this
14 issue, but there has been frankly a false negative put
15 forward in this case about who the Defendant Intervenor
16 are, who the market participants are, and that somehow we
17 are lottery ticket winners, that we are here profiteering in
18 some way.

19 No, we are a group of for-profit and non-for-
20 profit entities that have come forward, and the two I wanted
21 to highlight in particular were the Golden Spread Electric
22 Cooperative, which is a tax exempt consumer owned public
23 utility that was organized in 1994. As you can see from the
24 demonstrative, they are in a northern part of the State.

25 Golden Spread serves over 310,000 customers and it

1 in and of itself covers 24 percent of the land mass of the
2 State of Texas.

3 In addition to that, I also wanted to call out and
4 highlight the Southern Texas Electric Cooperative or "STEC"
5 as we friendly refer to it. It is a non-profit generation
6 and transmission cooperative. It was incorporated in 1944.
7 It has 301,000 retail customers across 47 South Texas
8 Countries -- excuse me, "Counties" -- Texas is its own
9 country, but it doesn't have countries within its country.

10 The point here, Your Honor, is really, really
11 straightforward, which is these are non-profits, these are
12 cooperatives. This is not a one-sided issue between some
13 type of big market industry player and retail customers.

14 There are millions of retail customers that will
15 be impacted by the result of the ERCOT claims. And there
16 are frankly, Your Honor, three points that I really want to
17 highlight today, with regards to why these market
18 participants should be allowed to intervene, and it's, one,
19 that we've got a right to intervene under 24(a)(2) that we
20 should be permitted to intervene because we will not cause
21 undue delay or burden.

22 And three, I want to address the limitations that
23 the Debtor is trying to impose on our participation in the
24 case, as opposed to the member co-ops.

25 THE COURT: So if I could, let me try and give you

1 a couple of points of reference, just so you have them and
2 it may help your presentation.

3 Number one, the whole argument about somehow --
4 the profiteering argument as you made it, it went in one eye
5 and out the other ear. If -- I don't know how to make that
6 -- that sounded awful.

7 But it just -- it carried zero weight. I mean,
8 you're either entitled to do it or not, and the reasons for
9 it -- I mean, obviously there are limits, but the reasons
10 for the requested intervention are -- I don't want to say
11 "wholly irrelevant," but they're pretty close in my mind.

12 Second of all, I wanted to put this concept out
13 because it's been talked about a lot about the whole issue
14 about the issue about is electricity a "good" and it's
15 something that is -- I have been focused on for a long time.
16 I think it's a fascinating issue.

17 What I do want to tell you -- in my mind, and I've
18 read every case that's been written -- at least that I know
19 of, is I actually think that you have to look at where you
20 are in the supply chain that it can be both. And so I think
21 that it is a factually intensive inquiry and so I think at
22 one point in the chain, it can be a "good," and at another
23 point in the chain, it can be a "service."

24 And the only reason I tell you that is in terms of
25 sort of sorting through the issue of having something be

1 *res judicata* or collateral estoppel with respect to that
2 issue. I don't see how that's really possible, but in my
3 mind it was a really important issue and it's going to --
4 when we get to the Motions for Leave to File Summary Judge,
5 you know, I find for a different reason, but I find some
6 concern the issue raised by ERCOT is that this is simply too
7 soon to take up that issue because I do think that it is a
8 factually intensive issue.

9 But I give you that only because I thought it
10 might be helpful.

11 And then finally with respect to the conditions, I
12 read them and what's been agreed to -- again, not -- ERCOT
13 still objecting to the intervention just in any shape, way
14 or form, but the fact that parties have agreed to certain
15 restrictions is great. You know, I try not to disturb
16 agreements, but it's not something I would say, well, if it
17 was good for them, it should be good for you. I'm just not
18 wired that way.

19 If I'm going to let you in, I do have the right,
20 the ability to impose conditions, but what is in that
21 Stipulation and Agreed Order is not in any shape, way, or
22 form a roadmap. And I don't know if that's helpful or not,
23 but I thought I'd tell you.

24 MR. MCKANE: All of it is very helpful, and I
25 would just -- regarding the stipulation point, Your Honor, I

1 just want to make clear that that was not even offered to
2 us. I'll highlight what's been offered to our group.

3 THE COURT: Okay.

4 MR. MCKANE: And I would be succinct on this. I
5 think these are relatively straightforward issues. I know
6 you were tackling some really thorny stuff in the last few
7 hours, but when you look at the issue of intervention -- and
8 there's a wealth of Fifth Circuit law on this issue and in
9 particular with regard to the relationship that we would
10 have that covers this.

11 Rule 24 is to be liberally construed. You know
12 that. That's the *Walmart* decision and others, and no one
13 has argued that our intervention motion is untimely. It
14 undeniably is.

15 THE COURT: Right.

16 MR. MCKANE: With regards to intervention as a
17 matter of right, you know, the real issue is: Do we have an
18 interest in relating to the property or the transaction
19 that's the subject of the adversary proceeding and will we
20 be practically impacted in a material way or will we be
21 impeded in our ability to protect our interest. That's
22 24(A)(2).

23 We have two primary basis for why we are impacted,
24 you know, with relations to what property or the transaction
25 in dispute. The first is, members of our group have

1 parallel 503(b)(9) claims. All the elements. Those claims
2 would be -- there would be series written. It doesn't have
3 to be *res judicata*. It doesn't have to be collateral
4 estoppel. The Fifth Circuit has taken a more liberal view
5 on those issues, but an adverse ruling on some of the
6 503(b)(9) issues may impair the ability of the Defendant
7 Intervenor who filed 503(b)(9) claims to pursue them.

8 For example, whether their ability -- whether they
9 are delivered in the ordinary course. Those are fundamental
10 issues for which there could be some concern, and that's the
11 *Sierra Club v. Lexington* (phonetic) decision.

12 THE COURT: All right. So let me ask --

13 MR. MCKANE: Now the other one, I think is
14 actually more potentially informative is what's at issue?
15 The property or the transaction? The market participant is
16 particularly Defendant Intervenor and I draw that
17 distinction for a reason that the Defendant Intervenor that
18 we represent directly stand dollar-for-dollar to recover the
19 net recovery of the ERCOT claim. These are not contingent
20 economic interests.

21 The electron came from the Defendant Intervenor,
22 but more importantly the fact that ERCOT is revenue neutral
23 makes it some unique. Not only is it revenue neutral, it is
24 bound by the protocol that are in evidence, Your Honor,
25 specifically Exhibit 14.

1 They are bound to turn over to the market
2 participants that never covered of these claims. And what
3 that means, Your Honor, is that our client are in many ways
4 akin to the insured situation in *Roth v. Marshall*. In the
5 *Roth* case, the insurer, Allstate, had agreed to defend
6 subject to some limited obligations. That's exactly where
7 the insured was here with regard to ERCOT. ERCOT has to
8 turn it over and that they've agreed to it, they're bound to
9 it by the protocol to turn over the net recovery of this
10 claim.

11 The Fifth Circuit said in *Ross*: Reversing a
12 denial of an intervention that the fact that the insured has
13 that direct interest to, in that case, keep the liability
14 maintained. In our case, to make certain that they're in
15 the recovery, what the size of the recovery is, was
16 absolutely a deficient direct interest in the State that
17 they should be allowed to participate. That's the decision
18 from 2006, incredibly instructive on that exact issue.

19 And when you get into what are they arguing about,
20 like contingent economic interests, that's simply not who we
21 are. That's not the situation ERCOT is in. ERCOT is the
22 clearinghouse, but the true parties-in-interest in this
23 claim are the Defendant Intervenor because they will
24 receive net of administrative expense that ERCOT incurs in
25 pursuing the claim 100 percent of the recovery. That's

1 what's going to be distributed to the marketplace.

2 Now, turning to whether that right is adequately
3 represented in this situation, Your Honor, I would start by
4 reminding you this is the minimum burden. It's a minimal
5 burden as recognized by the Fifth Circuit. And at this time
6 in the intervention, as opposed to a post-judgment case,
7 it's a question of whether it may be inadequately
8 represented.

9 And here, Your Honor, our relationship to ERCOT,
10 right, it's very much akin to market participant's
11 relationship with a governmental entity like the Texas
12 Alcohol and Beverage Commission, and in particular, our
13 interests don't exactly overlap. Their interests aren't
14 exactly ours. They want to make it a clearinghouse
15 relationship. They want to ensure that they can be the ISO
16 designated by the PUCT. Ultimately if they don't get the
17 money from Brazos, they'll turn and through the procedures,
18 collect it from the marketplace or somewhere else. That's
19 what the protocols say.

20 As industry participants, our clients are focused
21 on getting the proper recovery for the goods and services
22 that they provide. They've already provided them. They're
23 already gone out of pocket. They've already spent the money
24 on the gas. They've already dealt with the hedging
25 relationships. They just need to get the recovery.

1 That situation where the market participants are
2 focused, the industry participants are focused on their
3 economic interests as opposed to some type of regulatory or
4 industry oversight, has been recognized by the Fifth Circuit
5 as being sufficiently distinct or different.

6 And in particular, what I'm talking about is the
7 *Walmart* decision. In 2016 in *Walmart*, Walmart challenged
8 the entire alcohol beverage licensing structure of Texas,
9 the Texas Alcohol Beverage Commission.

10 A group of industry participants moved to
11 intervene. They were denied by the District Court. Up on
12 appeal, the Fifth Circuit again reversed and remanded saying
13 their interest is not exactly the same. The TABC is
14 interested in getting a procedural result saying that they
15 didn't do anything wrong, that the structure doesn't
16 violation the commerce clause of the Constitution. Whereas,
17 the industry participants are focused on the substance.

18 Here, Your Honor, we are focused on the substance.
19 ERCOT may not have any question about whether our interests
20 are distinct or different from ERCOT. You can look no
21 further than their position with regard to this intervention
22 because they have taken a position that some of it should be
23 in and some of it should not be in.

24 And so when you're evaluating the minimum burden,
25 there would be -- you know, for adequate representation, at

1 this stage there's no question given where we are. We are
2 far more attuned to the industry participants in the *Walmart*
3 case or in the *Sierra Club vs. (indiscernible)* decision.
4 Again, we're industry participants. They are logging groups
5 who were allowed to participate. Again, reversing the
6 decision from the trial court to deny intervention.

7 So what do we bring to the table? What value is
8 added? The thing you hire as, Your Honor, with regards to
9 goods and you know, what is -- whether electricity is a
10 good, our clients, right, and our experts can ease
11 materially in that issue. We can provide that we are the
12 people who have been generating power, dealing with
13 transmission, understanding the insularity power.

14 This is what we would bring to the table. This is
15 not just a purely legal issue. But when you look at what
16 Mr. Strubeck and the Debtor wants to put forward, they want
17 to let a substantive group in only on 503(b) issues, only to
18 file a legal brief. We know this is far more complicated
19 than that, that's there's fact and expert testimony that we
20 can provide that would aid the Court in evaluating the
21 fundamental issues in this case. Not just goods. It's for
22 how was the ERCOT market design and did it function as it
23 was designed to do?

24 And with regard to Winter Storm Uri, it did
25 function that way. It is designed to have price spikes and

1 those price spikes are capped at \$9,000. And so when you
2 get into how it functions, this Court has to evaluate what
3 is the ordinary course or how the ERCOT market functions.

4 Our client and our experts could come forward and
5 aide the Court in evaluating that issue. And if you have
6 any question about whether that may be an issue in this
7 case, the Debtors filed a motion and a draft complaint -- a
8 consolidated draft complaint against certain gas suppliers
9 where they took on exactly the issue of whether it was
10 ordinary course. We fully expect that to be an issue in
11 this case.

12 Now Your Honor, with regard to the remaining
13 issues on permissive intervention with regards to whether we
14 would unduly delay or prejudice the procedure.

15 Your Honor, I first want to note that issue only
16 applies permissive, not intervention as a matter of right.
17 And we know Your Honor's free to impose the existing
18 Scheduling Order on all intervening parties. When we're a
19 party to the case, we're a party to your Orders. We know
20 what the schedule is. We've seen the dates.

21 But with regards to issues like expert testimony
22 and expert reports that are due in December, we understand
23 what we could bring to the table, how we could aid the
24 Court, how we can protect our own interests, and how we will
25 comply with those. That's not undue delay. If we are bound

1 to this to the same Scheduling Order as everybody else.

2 And with regards to the undue prejudice, Your
3 Honor, they're going to have to litigate with the Defendant
4 Intervenors at some point in time. We have filed Proofs of
5 Claim, 503(b)(9) and others. The question is whether it's
6 now or later.

7 And it's not a question of whether other
8 intervenors in the case are better resourced or better able
9 to put forth the arguments. The bigger -- whether an
10 opponent is more vigorous or not is not undue prejudice at
11 all, and further, Your Honor, we believe consistent with the
12 *Babcock* and *Wilcox* decision that we -- our intervention
13 would aid the interest of justice by having the Court
14 litigate it once, as opposed to twice, some of these
15 fundamental issues.

16 So Your Honor, when we're going to what has been
17 -- lasted what are (indiscernible), if any would be imposed
18 on the intervening parties? And here, Your Honor, we
19 recognize what the Fifth Circuit has said. We recognize the
20 decision in *Beauregard*, which is there can be restrictions
21 applied. They need to be reasonable.

22 All right. That's what the *Beauregard* court said.
23 It was an admiralty in rem case and the restrictions that --
24 the restrictions that were applied on the intervening party
25 were opposed because they were being applied to everyone, to

1 all of the parties, right?

2 And with regards to what is reasonable in this
3 case? And that's really the question. What are the
4 touchstones here as to reasonableness? What the Debtor has
5 put forward to our group is the following:

6 No propounding discovery, no noticing depositions,
7 no filing dispositive motions, no arguing at hearings, no
8 examining witnesses at trial, no ability to engage in
9 settlement discussions, and no appeal.

10 I don't know how you could be allowed to
11 intervene, right? That doesn't even intervene in name only.
12 That violates due process.

13 Now we are prepared to work as a group. We have
14 evidence that by working as a group to date, we are prepared
15 to work with ERCOT. We are prepared to live with Your
16 Honor's schedule and do the best we can to present the
17 evidence consistent with the Scheduling Order and trial
18 dates.

19 But the limitations that the Debtor wants to put
20 forward on us which ultimately reduces to having a
21 substantive of our group in to file a legal brief on certain
22 issues dealing with 503(b)(9) cannot be consistent with what
23 is our right to issue, what that risk is in these cases,
24 what's at risk to our clients, given their direct interest
25 in these cases. It's not consistent with due process or

1 required under Rule 24.

2 So ultimately, Your Honor, and I'll respond to
3 Mr. Strubeck's arguments and others, so I'll reserve an
4 opportunity to do that later. What we're focusing on here
5 is simply the opportunity to intervene and address and
6 address an interest that we felt is directly at risk in
7 these cases.

8 What the Fifth Circuit has said, that Federal
9 Courts should allow intervention when no one would be hurt,
10 and the greater justice could be attained with the
11 participation of the intervening parties.

12 Your Honor, back on August 4th at a status
13 conference, had an engagement in a colloquy when you were
14 talking to ERCOT and you asked: When am I going to hear
15 from the real parties-in-interest? The real parties-in-
16 interest are right here. We want to participate. We'll do
17 so reasonably and we ask that we be allowed to intervene.

18 THE COURT: All right. Mr. Parker, let me just
19 ask: Do you agree that Mr. McKane's group represents
20 100 percent of the net recovery out of this Proof of Claim
21 dispute?

22 MR. PARKER: No, Your Honor, we don't believe
23 that.

24 MR. MCKANE: Your Honor, I apologize if you were
25 left with that impression. We are not 100 percent -- and I

1 don't mean to suggest that we're all 100 percent.

2 When ERCOT gets its net recovery, it must be
3 construed into all market participants. This is the group
4 of market participants have chosen to intervene.

5 THE COURT: Ah, then it may have been my
6 misunderstanding.

7 MR. MCKANE: I might have spoken too broadly. And
8 I want to correct the Record to the extent there's any
9 confusion.

10 THE COURT: I was just surprised. That one caught
11 me off guard. All right.

12 MR. MCKANE: I would be impressed if I had a
13 circle of that many people.

14 THE COURT: So let me ask you -- because I need to
15 understand logistically what you're asking me to sign up
16 for.

17 So your group -- or within your group, how many
18 parties and how many of those parties have separate counsel
19 as we sit here today?

20 MR. MCKANE: Sure, and I have a chart if it helps.
21 See, I represent Calpine.

22 Sherman & Sterling represents NRG Energy, NG,
23 Howlin, and Exterra and Energy Marketing.

24 Ms. Ross and the Ross Smith firm represents
25 Tenaska Power Services.

1 Holland & Knight represent Gold Spread Electric
2 Cooperative.

3 And Haynes and Boone represents the Southern Texas
4 Electric Cooperative.

5 THE COURT: All right. So let me ask you this,
6 and if you need to have somebody get emails and texts,
7 that's certainly fine.

8 As part of this, given what I've said about the
9 issue of electricity being a good, if we're going to try
10 this issue, we try the issue. And if you're going
11 intervene, you're going to be bound, and I would want that
12 agreement that you don't get a second shot at it whatever
13 the decision is out of this adversary, you live by with
14 respect to Proofs of Claim that you have filed, which I have
15 so many questions about the Proofs of Claim, but today is
16 not the day.

17 MR. MCKANE: I understand that, Your Honor. I can
18 only speak for Calpine. You know, I understand that we do
19 not get two bites at the apple, but if we're going to
20 address goods and intervene and protect our interests here,
21 that that could apply to our separate 503(b)(9) claim that
22 has been filed.

23 THE COURT: Okay. And perhaps --

24 MR. MCKANE: I'd ask for two claims.

25 THE COURT: No, perhaps you can get somebody on

1 your team to send a text or an email around while we're
2 talking. Just because that's going to be an important
3 issue. I'm not going to create -- if I'm going to do this,
4 I'm not going to create an opportunity where I go through
5 what is going to be one of the most interesting and in my
6 mind the hardest decisions that I've ever been presented
7 with. And then do it all over again, you know, eight or
8 nine different times.

9 If we're going to do it and you folks are going to
10 be there, then we're only going to do it once.

11 Second question that I have -- and this is one
12 where I need -- this is going to be a tough one to achieve.
13 That if I were to agree to this, can you-all live with the
14 issue that with respect to the group, you get one lawyer per
15 issue. Doesn't mean you can't divide it up between
16 yourselves, but if you get up and argue, you know, ordinary
17 course, I don't hear nine different arguments.

18 You guys can select your champion and that's the
19 argument that I get presented with.

20 MR. MCKANE: Your Honor, we'd have to discuss the
21 scope of issue, but I understand that. I mean, like the way
22 I was thinking is it's akin to one lawyer per witness?

23 THE COURT: Yeah.

24 MR. MCKANE: You know, to be fair, like, there is
25 no power of attorney. I cannot speak for the entire group

1 unless they agree to designate me to do so and I agree to
2 take the bulk of this argument.

3 THE COURT: No, I got it, but you-all are
4 experienced enough -- and obviously it may involve a
5 conversation with clients, and I got that. But I am -- this
6 is one of those and I'm going to hear Mr. Strubeck's
7 arguments, but as I think through this, the argument that
8 ERCOT -- you know, I mean, if you remember way back when, I
9 was surprised about how ownership went because it just made
10 no sense to me, but it is what it is and with that, it's a
11 tough argument for me to accept that ERCOT doesn't
12 adequately represent your interest and that if they don't,
13 then you may have issues with ERCOT.

14 But I also understand the differences between
15 governmental fiscal reality and commercial fiscal reality.
16 But if I'm going to do this, 'cause it's going to strain
17 everybody, I'm not going to give you -- and I'm open to
18 talking about how, but I'm not going to give you nine
19 different shots, you know, to just complicate this even more
20 than it already is.

21 And so if after Mr. Strubeck makes his argument,
22 if you-all need to step off and have a conversation, I'll
23 certainly provide you that opportunity, but that and the
24 issue to be bound by the -- you know, by the issues
25 regarding the 503(b)(9) are going to be really important to

1 me because those are efficiencies that I gain with the extra
2 burden. I'm not inclined to incur the extra burden unless I
3 see a benefit to the process in the estate, and with the two
4 things I've outlined, I see that because those will have
5 implications with respect to the other Proofs of Claim, and
6 whether or not they stand -- and I know the Proofs of Claim,
7 different people are in different positions, but there's
8 some common threads to all of that.

9 And I just see the efficiency that kind of matches
10 the burden, if you will, if I can -- if we can find a way
11 that everybody can live with, with moving that forward.

12 And again, I'm going to hear what Mr. Strubeck, as
13 well as the Committee, have to say about that, but I'm just
14 -- I'm trying to give you some sort of -- just a view into
15 my head as I came out for this arguments.

16 MR. MCKANE: Hopefully, Your Honor, we may take
17 you up on that quick opportunity to circle the group and do
18 that check-in with our clients after Mr. Strubeck and after
19 the Committee.

20 THE COURT: Certainly. Let me ask: Any of the
21 other market participants want to -- that are in
22 Mr. McKane's group, want to jump in and just add something
23 or a reaction to what I've said or any comments? Or you
24 want to save those until you have your conversation?

25 MS. ROSS: Your Honor, this is Ms. Ross. I would

1 like to speak, if I may?

2 THE COURT: Of course.

3 MS. ROSS: Again, on behalf of TPS, I may leave
4 the bulk of my argument as rebuttal, if the Court will
5 permit me to do that?

6 THE COURT: Sure.

7 MS. ROSS: I think I want to clarify two things as
8 the Court is thinking about these issues.

9 My client, TPS, entity LCRA, NexTerra and Calpine,
10 they are different than many of the market participant
11 represented by Mr. McKane.

12 Let me briefly explain that they are direct --
13 they have a direct threshold with the Debtor.

14 THE COURT: Right.

15 MS. ROSS: That's how this is.

16 THE COURT: But those don't -- but do they -- but
17 I'm going to look at this from the viewpoint of what's
18 actually being tried in this adversary.

19 MS. ROSS: Right. I agree.

20 THE COURT: Okay?

21 MS. ROSS: And like, for example, Your Honor, my
22 client has a claim for IRS services or what's called
23 "ancillary services."

24 THE COURT: Sure.

25 MS. ROSS: Which is different than some of the

1 others. I think LCRA and NexTerra and Calpine all provided
2 electricity. My client sold IRS ancillary services. So I
3 want to make sure that you understand there is a difference
4 between us.

5 THE COURT: does that mean -- if I could ask a
6 question and I'm sorry, but it's like your video is a little
7 muted so I tell -- I can't see when you stop talking. So my
8 fault.

9 MS. ROSS: I'm sorry.

10 THE COURT: No, no, no, no. It's the world in
11 which we live. Although I do like the blue painting. My
12 eyes have been draw to it.

13 (Laughter.)

14 THE COURT: Are you telling me that with respect
15 to the issues that are going to be tried in the claim
16 objection proceeding that you could have different views
17 than other folks in the group, because again, we're not
18 trying your claims. The only thing that would -- that I
19 reference with respect to your claims are issues, to the
20 extent that you've made a 503(b)(9) claim is that I simply
21 want folks bound if we're going to come in and try the
22 issues with respect -- again, if you didn't provide
23 electricity, you know, I got it a that you may have a
24 separate issue that are ancillary services, goods, for
25 purposes of 503(b)(9). I got all of that.

1 But all I want is if we try that issue, that
2 you're bound. That you don't then come back and say, "Well,
3 no, I get to do this over in a subsequent claim objection
4 hearing. That's --

5 MS. ROSS: Your Honor, I am not saying that TPC,
6 LCRA and NexTerra, Calpine would have different views than
7 the other market participants on those issues.

8 THE COURT: Okay.

9 MS. ROSS: We are aligned, ultimately, on the
10 issue. We all believe very affirmatively and strongly that
11 electricity is a good and that our RRS Services, ancillary
12 services are goods.

13 And so Your Honor, my line on this is that I was
14 just trying to make sure you understood we are not in the
15 same legal position.

16 THE COURT: I got it.

17 MS. ROSS: But we do share -- we do share a
18 willingness to be bound on that -- on those issues.

19 THE COURT: Got it.

20 MS. ROSS: And I think I will talk to my client.
21 I'm probably going to recommend, even with this Court's
22 restriction -- if there are no further restrictions, then I
23 think my client is going to be willing to proceed with
24 intervention, if the Court's inclined.

25 THE COURT: Sure. We're going to have some

1 interesting conversations about that goods issue. I started
2 asking questions of my new law clerk and he threatened to
3 quit.

4 (Laughter.)

5 MS. ROSS: I'll finish up at the end here. I just
6 have one little piece of evidence I need to talk about, as
7 well.

8 THE COURT: Sure.

9 MS. ROSS: But I think that we should let the
10 other side proceed.

11 THE COURT: All right. Let me just ask. Are
12 there any other -- are there any other market participants?
13 Mr. McDowell, I saw you leaning forward. Did you want to
14 weigh in?

15 MR. MCDOWELL: Yes. Yes, thank you, Your Honor.

16 I did just want to react to your request. As I
17 understand it, is the idea of having once counsel speak per
18 issue will not be problematic with any of my clients. We
19 approached this similarly today. Mr. McKane and I did a
20 similar intervention in the PG&E bankruptcy case. We've run
21 this gauntlet before and frankly, we don't want lawyers
22 stepping on each other's arguments either. So I think
23 that's probably we would have approached it, with or without
24 the restrictions that the Court is suggesting.

25 The second restriction I think is probably an

1 acknowledgement of the law of the case or *res judicata*. I
2 don't understand how we could intervene, litigate over an
3 issue about whether electricity is a good, for example, and
4 come back to you a month later with straight face and try to
5 relitigate the issue and somehow hope for a different
6 result. This does seem to be in the realm of life. But I
7 appreciate the opportunity during the balance of the hearing
8 to confirm those positions with our client.

9 THE COURT: All right. Thank you.

10 Anyone else before I go to Mr. Strubeck?

11 MR. RUZINSKY: Your Honor?

12 THE COURT: Yes, Mr. Ruzinsky.

13 MR. RUZINSKY: Thank you, Your Honor. Bruce
14 Ruzinsky for LCRA.

15 Your Honor, LCRA is a non-profit political
16 subdivision of the State of Texas that provides wholesale
17 power to small rural cities and electric co-ops in Central
18 Texas. LCRA sold electricity to Brazos under an EEI
19 Agreement and LCRA also generates power sold in the ERCOT
20 market.

21 LCRA was included in the original group
22 intervention motion, Docket No. 28, but we've concluded that
23 the only aspect of this adversary proceeding that LCRA seeks
24 to intervene and participate in is the 503(b)(9) issue.
25 LCRA's 503(b)(9) claim is set forth in its Amended Proof of

1 Claim, Claim No. 119. LCRA takes no position on any other
2 issue in this case, including repricing. And LCRA does not
3 oppose any intervention by any party seeking intervention in
4 this adversary proceeding.

5 While Mr. Strubeck is presenting, I'm going to
6 check with my client to cover the two points that Your Honor
7 mentioned and I'll be prepared to respond to the Court on
8 those.

9 THE COURT: So let me -- and as you go through
10 this, and I want to make this pertain to everyone. If your
11 issue is just the 503(b)(9) issue, again, because I think
12 that it is very fact-intensive as to where you are in the
13 process and you're relationship into the Debtor, I -- to the
14 extent that -- and I think it's actually a cheaper way for
15 your client -- I am perfectly happy to give you comfort by
16 simply saying that you aren't bound by any determination in
17 the 503(b)(9) adversary if that's your only issue.

18 And if, as, and when there's an objection filed to
19 your claim, it seems to me that that is a much more
20 efficient, direct proceeding to have that determination
21 because otherwise -- and again, you know, I respect you more
22 than almost anyone in terms of your legal acumen. I mean,
23 if you feel a need to be in this, then you should have that
24 conversation, but I'm telling you if all you're working on
25 for or trying to protect is a 503(b)(9) claim, I will

1 certainly give you the protection of making it very clear
2 that you are not bound by the determination in the
3 adversary.

4 You know, obviously you're free to watch. You may
5 learn something. You may learn my predispositions, my view
6 of the law, you may learn a lot and you may figure out that
7 I don't know what I'm talking about. You know, you have all
8 those options.

9 But it just -- you know, if that's your only
10 issue, I can give you a lot of comfort that will save your
11 client a lot of money.

12 MR. RUZINSKY: I appreciate that, Your Honor. I'm
13 going to go confirm with our client and circle back with the
14 Court here before we conclude.

15 THE COURT: All right.

16 MR. RUZINSKY: Very helpful.

17 THE COURT: Thank you.

18 MR. RUZINSKY: Thank you, Judge.

19 THE COURT: Anyone else before I go to
20 Mr. Strubeck?

21 (No audible response.)

22 THE COURT: All right. Mr. Strubeck?

23 MR. STRUBECK: Yes, thank you, Judge. Again for
24 the Record Louis Strubeck of O'Melveny & Myers on behalf fo
25 the Debtor.

1 Judge, I wanted to take this opportunity to
2 welcome you back from vacation. I'm sure that this is the
3 first think that you wanted to do on your first day back.

4 THE COURT: Been thinking about it all --

5 MR. STRUBECK: So thank you for giving us all this
6 time.

7 THE COURT: No, been thinking about it all
8 weekend, so -- and vacation was fun.

9 THE COURT: So just a couple of things, Judge. I
10 think -- I appreciate Mr. McKane's brevity and I appreciate
11 your comments, and so I think I'm going to adjust my
12 argument a bit here on the fly and see if I can be equally
13 succinct and maybe just focus on the things that I think
14 you're focused on, and address a couple of things that
15 Mr. McKane grazed as well.

16 As I think you know, Judge, we had provided to
17 Mr. Alonzo early this morning a deck that you heard
18 Mr. Mendiola go through in terms of his part of his
19 presentation. I have frankly intended to spend a good
20 amount of time going through the rest of that deck, with
21 respect to the intervention issues, but I'm not going to do
22 that right now, I don't think, Judge.

23 But what I was going to suggest is that -- and
24 this doesn't need to be put up onto the screen, but we had a
25 nice summary in our demonstrative package of the different

1 parties who were moving for intervention today, and we had
2 broken them down mostly so the Court could appreciate the
3 difference between the market participants on the one hand
4 and all the different market participants who were involved,
5 and then the members on the other.

6 So I'll just make a reference to page 21. To the
7 extent, Judge, that you find that helpful. And I won't get
8 into it. I will say that one of the things that I was going
9 to say initially here, Judge, was I don't know that I've
10 ever been involved in a situation where there is many
11 potential intervenors as here. And when I tried to tally
12 them up, I think I got to 23 and that didn't even include
13 some of the affiliates that weren't disclosed in the group
14 of market participants that Mr. McKane and others represent.

15 So -- and that's going to be relevant. You know,
16 I kind of want to get into the permissive intervention part
17 of, I guess, is going to be a combined opening statement and
18 closing argument just in the interest of time here.

19 THE COURT: Sure.

20 MR. STRUBECK: So I'll start off by saying, Judge,
21 two things that while I wasn't an active participant in the
22 first part of the proceedings today, I paid very close
23 attention to what was going on and I heard you reiterate a
24 point that we have been trying to make repeatedly since we
25 responded to the ERCOT Proof of Claim, and that point is

1 that this objection is very narrowly crafted to be specific
2 to ERCOT and the ERCOT standard form agreement and that's
3 it. And you know, had I set the table as I usually do in
4 the beginning of these hearings, you would have heard me say
5 that and I didn't have to because you picked up on it.

6 So I want to make that point because I think
7 that's a pervasive point when it comes to whether it's a
8 mandatory or intervention by right or permissive
9 intervention.

10 And the second thing I want to point out, which
11 I'm going to come back to when I talk about permissive
12 intervention is there is a need for speed here in this case,
13 as I have repeatedly said. And the right sizing of the
14 ERCOT claim were maybe better stated that the appropriate
15 determination of the ERCOT claim is the central gate-keeping
16 item here.

17 And so to the extent that there's any delay that
18 is occasioned in connection with having that claim
19 adjudicated, it creates severe prejudice -- not just to
20 Brazos, but to all the other parties-in-interest here
21 because the sooner we connect this bankruptcy, the better
22 for a variety of reasons, not the least of which is the
23 administrative burn here. This is a really complex case, as
24 Your Honor knows, and so that makes the second part, the
25 permissive intervention part a little bit different of an

1 analogy maybe or a look than you typically see when that
2 argument is being made

3 So let me start by talking very briefly about the
4 intervention of right piece of it under Rule 24(a)(2). I
5 don't agree with what Mr. McKane said, as eloquent as he is
6 and as well as he argued that piece of it, we don't believe
7 that there is a right to intervene here. And you know,
8 first and foremost, Judge, I wouldn't use the phrase a
9 "lottery winner" here, but I think what we used in our
10 pleadings and our papers were more of a "rooting group" in
11 terms of as a group in terms of the attempts by the market
12 participants intervene.

13 And we should lose track of the fact that all of
14 the market participants -- we also break this down, Judge,
15 and so our material is a good portion of the market
16 participants seeking to intervene has short-pay claims. And
17 those are all subsumed within the ERCOT claim.

18 So it's not a situation where there are
19 duplicative claims that are being asserted here or treated
20 claims that are being asserted here. Those claims are
21 really duplicative of in terms of being subsumed within what
22 is being sought by ERCOT in its Proof of Claim.

23 So we don't think that there is a direct, but is a
24 substantial or legally protectable interest, which is the
25 standard under intervening by right, and so we don't think

1 that there is in that first component of Rule 24(a)(2) a
2 right to intervene.

3 Now what I want to point out, though -- and I
4 think more of a focus should be spent on this -- and you
5 even alluded to it earlier, Judge, is whether there is an
6 adequate representation of the interests that the market
7 participants are asserting here, and I would submit that
8 there is. And I would say that it's here in spades this
9 time. I mean, I heard Mr. Alibhai's presentation today, and
10 I don't think there's any question about any question about
11 what a good lawyer he is.

12 THE COURT: Right.

13 MR. STRUBECK: I know the Munsch firm very, very
14 well, and the arguments that they're going to be making in
15 connection with defending this adversary proceeding that
16 objects to the claim are going to be the same kind of
17 arguments that you're going to hear, if you let all these
18 other people intervene. In fact, to my knowledge, nobody in
19 their intervention pleadings have asserted anything other
20 than what we've already heard or seen from what ERCOT has
21 said.

22 So I think in this case more so than maybe any
23 other intervention case that I've seen, there is an adequate
24 representation based upon the existing parties and there's a
25 flip side of that in terms of the members, which I won't

1 spend as much time with now because we have an agreement
2 with them from a stipulation standpoint.

3 But, Judge, the parties that are involved
4 representing the main combatants in the ERCOT litigation are
5 going to address every single issue as fully and as
6 completely and as well as anybody else can.

7 And when you were asking Mr. McKane to go through
8 the list of other law firms that were involved here, to the
9 extent that you allowed intervention by at least part of
10 them, that was a list of some really prominent, really good
11 law firms, all of whom I think will want to be heard at some
12 level. And again, I just don't think that's necessary here
13 because given the lawyers that are already involved, there
14 is an adequate representation.

15 I want to turn very briefly to the permissive
16 intervention portion of this and I don't think it's quite as
17 cut and dry as Mr. McKane suggested. And part of that,
18 Judge, goes back again to the notion of the specific
19 contract that is at issue here in terms of the objection to
20 the ERCOT claim.

21 And there's a couple of different components when
22 it comes to permissive intervention. It's not just whether
23 this is going to result in undue prejudice and delay -- and
24 I'll talk about that in just a second, but there's also the
25 component of whether there's a claim or defense that shares

1 with the main action, a common question of law or facts.

2 And frankly, Your Honor, I don't know they satisfy that
3 requirement either.

4 But as I said at the get-go, here because the
5 resolution of this claim is so critical to the case, and
6 especially getting it resolved as expeditiously as possible,
7 the last factor in the permissive intervention rule, which
8 involves undue delay and prejudice is specifically relevant
9 here because no one can manage their docket as well as you
10 can, Judge, and I have every reason to believe that if you
11 allow intervention by some or all of these parties, you're
12 going to impose, as you're authorized to do, restrictions
13 that are going to allow you to manage this the best you can.

14 But the sheer number of additional parties who are
15 trying to intervene here, and all the different law firms
16 that are going to want to be heard. And again, no one has
17 raised any separate issues here. When I read all the
18 intervention and there's a bunch of intervention pleadings
19 to read, no one is coming up with anything that ERCOT hasn't
20 already asserted.

21 And so there's just not a need to expand what is
22 already a very big group of attorneys in this group and let
23 other people come in and make arguments in connection with
24 these other claims and the market participants are met.

25 I wanted to mention, Judge, that Ms. Ross and

1 Mr. Ruzinsky had mentioned specifically that their claims
2 are little bit different than the claims that Mr. McKane was
3 referencing earlier. As Your Honor probably have noted,
4 that was one of the groups that would be intervenors who we
5 had said we didn't have an opposition for them to come in
6 and the reason for that was we thought that there were very
7 specific issues because they had direct contracts with us,
8 unlike all the other market participants.

9 Mr. Ruzinsky's client and Ms. Ross's client had
10 direct contracts with us, direct power purchase agreements
11 with us. And so because of the issue that was involved
12 under -- or issues under 503(b)(9), we thought that with
13 respect to their intervention there was a -- in fairness and
14 equity, they should be entitled to intervene and we had made
15 that concession as part of our response.

16 There was another point that I wanted to make,
17 Judge, because back at I think it was in June, you were
18 mentioning that you were hearing a lot from your friends in
19 Austin and they were asking you, you know, kind of what you
20 were doing with this case and what you were thinking about
21 with this case. And again, as I think Mr. Mendiola made
22 clear early this morning, we're not in connection with this
23 adversary proceeding trying to do anything that has to do
24 with repricing the market. We're just not.

25 This is a very specific contractual claim that was

1 initiated by ERCOT that we chose to respond to an adversary
2 proceeding. And I kind of wonder just as a practical
3 matter, not that this is a direct consideration of yours,
4 when you're considering who to let in and who not to, what
5 the perception in Austin would be when 20 or 23 market
6 participants all of a sudden are allowed to get in this
7 lawsuit.

8 And to me, although I know how careful you will be
9 when it comes to your ruling here, and keeping it
10 specifically tailored to your jurisdiction, you have the
11 optics around that were initiated in Austin are going to
12 suggest that maybe your jurisdictional approach to this
13 mindset is a little bit broader than I think the specific
14 issues, which we tried to focus the Court on.

15 So I know I've gone very quickly. I've tried to
16 follow suit, with what Mr. McKane did and tried to respond
17 to some of the things that you had raise. I guess the last
18 thing that I'll say is what Mr. McKane mentioned that I
19 didn't or we didn't made a proposal to him in terms if you
20 were going to allow intervention, you know, what
21 restrictions might be appropriate.

22 We did, however, indicate that to the extent you
23 were going to allow it, we thought that restrictions would
24 be appropriate and I know we're not yet to the part of this
25 that talks about members, but I would say that the

1 stipulation that we reached with the members is a pretty
2 good template as to if you were to allow others to
3 intervene, what the restrictions should be.

4 So with that, I'll stop and see if you have any
5 questions that you'd like for me to address.

6 THE COURT: So I actually do, and this will give
7 you some insight as to why I'm thinking what I'm thinking.

8 Mr. Parker, if I could ask you a question?

9 MR. PARKER: Yes, Your Honor.

10 THE COURT: So the claim -- and I'm not trying to
11 drive anything. I just want to understand the dynamics. So
12 you're asserting a claim of \$2 billion. If the Debtor came
13 and said, we would settle for an unsecured claim of a
14 billion dollars -- and I'm just picking numbers. I don't
15 mean anything by the numbers. Do you have the ability to
16 resolve the claim or do you have to go to all of the
17 affected members and say, you know, your portion of this
18 would be X, do you agree that that satisfies your claim?
19 How does that work?

20 MR. PARKER: Your Honor, I'm not sure it's either,
21 frankly. I don't think it's as easy as saying we'll take
22 half the claim and I guess go to the market to upload the
23 rest after the --

24 THE COURT: So let me ask it in reverse and now
25 you'll see why I'm asking the question. If Mr. McKane and

1 Mr. Strubeck have a conversation, as I know that they would,
2 and Mr. McKane says we've looked at all this and Calpine
3 would adjust its claim to Z. I'm assuming that that -- and
4 as part of it we agree not to do one, two, three, and four.
5 And I go only go one, two, three, and four 'cause I don't
6 know what ERCOT would want.

7 But if Mr. McKane's client reached a resolution
8 with the Debtor, wouldn't that by definition adjust your
9 claim?

10 MR. PARKER: It could, Your Honor, depending on
11 how it's structured.

12 THE COURT: Okay. And so clearly Mr. McKane's
13 client has the ability to negotiate its own claim. I mean,
14 you would have to agree with that, right?

15 MR. PARKER: Yes, Your Honor.

16 THE COURT: And what I was trying to figure out
17 was do you have the ability to effectively negotiate
18 somebody else's claim 'cause that was why -- that was one of
19 the reasons that I went down this path because I don't see
20 how you do.

21 MR. PARKER: Your Honor --

22 THE COURT: And if you do, you do.

23 MR. PARKER: Yeah, we don't, Your Honor. It's our
24 claim to negotiate.

25 THE COURT: Well, it's your claim to negotiate,

1 but -- and hold on.

2 (Court confers with staff.)

3 THE COURT: Sorry, I got a mom and two little
4 girls, so that's more important than anything.

5 So what I was coming back to and again, I want to
6 understand it. Mr. Parker, as I look at this and of course,
7 I'm going down all of the different branches of the decision
8 tree trying to sort of figure out where they end up, because
9 that's just what I do. And so what I was really focused on
10 was do you have the ability to actually recognize risk in
11 litigation in terms of fixing your claim, or do you have to
12 go get -- as a lot of governmental agencies do, you have to
13 go get an answer -- you have to go get an answer by a Court
14 with the final word and then that's what you live with.

15 And so what I was trying to figure out is, at
16 least in my view, and I want to give people an opportunity
17 to respond to this, is I've got a group ably represented
18 that have control over their own destiny because, again,
19 that's the difference between, you know, governmental fiscal
20 and commercial fiscal, is that I've got folks who could then
21 sit down and, again, with the right structure and you
22 obviously would have to provide some guidance on this, but
23 could have a negotiation that would effectively reduce the
24 ERCOT exposure and the ERCOT claim and in a way that quite
25 frankly could be good for everyone.

1 But you know, again, I don't understand. I was
2 wrong from the very beginning with what ERCOT could and
3 couldn't do and so I'm trying to learn, as well.

4 MR. PARKER: Well, Your Honor, ERCOT is a
5 counterpart to these transactions so it would be our claim
6 to negotiate. If a party to which we owe money wants to ask
7 for that money, there could be a resolution there.

8 But it would be our responsibility to negotiate
9 and not be able to help them.

10 THE COURT: So you think that if you owe Calpine a
11 dollar, it's your belief that you could go to the Debtor and
12 say, I'll take 50 cents from you, and Calpine, you don't get
13 a voice in that?

14 MR. PARKER: No. I'm not saying that, Your Honor.

15 THE COURT: Okay. What are you saying?

16 MR. PARKER: I'm saying that Calpine comes to us
17 and say they owe us \$100, you only owe us 50.

18 THE COURT: But that conversation is much better
19 had between the person that's paying and the person that's
20 benefits from it, right? Because you don't take -- you
21 don't take any money out of that -- at least that's what
22 everybody said that you're revenue neutral.

23 I mean, you -- and I don't mean this in any way
24 disrespectful, but you don't really care what the outcome is
25 so long as you comply with your rules, right?

1 MR. PARKER: Well, let me listen to it. Sure we
2 care, Your Honor. I mean, yes, we're neutral, but the
3 providence by which we'd have to go back to the market to
4 make up for any short pays is a lengthy one and it does
5 impact everyone. And so there is a concern that if we
6 negotiate money on one end and we're also owed money on the
7 other, somebody has to pay for that and frankly it's not
8 going to be ERCOT as far as the market.

9 THE COURT: Yeah. See, this is exactly the reason
10 why I think having the commercial parties involved in this
11 actually makes sense 'cause Mr. Strubeck, it gives you
12 someone to talk to that actually has -- is going to be
13 driven by economic rules, as opposed to something that none
14 of us will ever understand.

15 And I only tell you that again because I ask --
16 the questions I ask were very specific. I mean, one, I do
17 want the 503(b)(9) issue teed up the right way so we don't
18 do it multiple times. I also think there's a tremendous
19 amount of risk in all of this for everyone. I also think
20 that there's a lot of latitude. And different people are
21 going to have different sensitivities to be able to sit down
22 and have a real conversation about the right outcome for
23 their particular client. And ERCOT can't possibly be able
24 to recognize everybody's particular situations and there's a
25 way in my mind in that negotiation that ERCOT has no choice

1 but to say, yeah, that's a fair outcome because you've taken
2 care of all of my issues for which I'm responsible.

3 And Mr. Strubeck, I'm only telling you this
4 because it is driving part of my decision. I will tell you
5 I agree with you. I don't think it's intervention as a
6 matter of right, but I've been focused on intervention as a
7 matter of being smart and practical. And that's where I've
8 been focused.

9 MR. STRUBECK: Judge, may I respond just very
10 briefly?

11 THE COURT: I want you to.

12 MR. STRUBECK: Yes. Thank you, Judge.

13 And I appreciate everything that you said and you
14 might recall that at one of the earlier hearings, you know,
15 we talked about whether a mediation here might be
16 appropriate to a point. And I think one of the challenges
17 that we had is what you're thinking about right now. So we
18 didn't kind of get anywhere with that motion.

19 What makes this a little bit more challenging is
20 you're focusing in on exactly what the big issue is here, in
21 terms of some of the economic interests that some of these
22 parties have. But it's one step removed, right? Because --
23 not to steal Mr. Mayer's thunder, I know he's waiting to
24 weigh on this, too. But the market participants are
25 creditors of a creditor, with ERCOT being the creditor, and

1 so, you know, they're one step removed from it.

2 And I know you want to find a solution to this,
3 and I understand the way you're thinking. But I believe
4 that it is going to be much more difficult to manage this
5 litigation if these parties are allowed to come in.

6 And before I stop, Judge -- and you may have other
7 questions -- I realize that Mr. Mendiola, when he went
8 earlier this morning, did not introduce all of the exhibits
9 that we got. And there were just four of them that involved
10 my piece of this. And so, if there's no opposition, just so
11 I can make sure the Record is complete, if it's okay --

12 THE COURT: Sure.

13 MR. STRUBECK: -- I'll just tell you what those
14 four exhibits are, and then I'll be quiet, unless you have
15 any other questions.

16 THE COURT: No, go ahead.

17 MR. STRUBECK: So, Judge, they're Docket Numbers
18 112-1, which is ERCOT's Proof of Claim. That would come in
19 pursuant to the same (indiscernible) you heard Mr. Esser
20 outline when it came to the proofs of claim of the other
21 parties here.

22 And then 112-2, the ERCOT (indiscernible)
23 protocols. And then 112-6, actually. There are several
24 subparts to 112-2. And then 112-6, which is the debtor's
25 schedules of assets and liabilities. And finally, 112-20,

1 which is the ERCOT market notice.

2 There is no objection to any of those, Judge, that
3 I just moved for their admission, subject to the same
4 conditions that Mr. Esser went through with the proofs of
5 claim with the other parties.

6 THE COURT: All right. Thank you.

7 Any objections?

8 UNIDENTIFIED: Your Honor --

9 MS. HARRISON: Your Honor --

10 UNIDENTIFIED: -- I believe the last two exhibits
11 and -- with what I'll (indiscernible) 3 and 17, I think it's
12 -- I think the assets are Debtor's Exhibit 3, which is
13 112-6. Oh, I think that (indiscernible) that's right.
14 Mr. Strubeck is correct. It's 112-6, which is Debtor's
15 Exhibit 3. I see now. Yeah, no objection to that.

16 MR. STRUBECK: Okay. I'm sorry. I was referring
17 to them as docket numbers.

18 THE COURT: No, it's -- I've got it.

19 And I think there was someone else that had --

20 MS. HARRISON: Yes, Your Honor. Julie Harrison on
21 behalf of the debtor.

22 I just want to clarify, Debtor's Exhibit 2 is
23 Docket 112-2 through 112-5. We had to break it up because
24 it's large.

25 THE COURT: Got it. So the offer is 112-1 through

1 112-6 and 112-20. Any objection?

2 MR. STRUBECK: Yes.

3 THE COURT: All right. Then they are admitted
4 without objection.

5 (ECF 112-1 through 112-6 received in evidence.)

6 THE COURT: Mr. Strubeck, did you have anything
7 else? Ms. Ross had wanted to speak.

8 MR. STRUBECK: I didn't, Your Honor, unless you
9 had any other questions you wanted to ask me.

10 THE COURT: I may.

11 MR. MAYER: Your Honor?

12 THE COURT: Yes. Oh, Mr. Mayer, of course.

13 MR. MAYER: This is Tom Mayer.

14 THE COURT: Yes.

15 MR. MAYER: And I realize the -- your -- you have
16 indicated which way you think you want to go, and it's
17 always very difficult and perhaps terribly unwise to --

18 THE COURT: No, not at all, not on this one.

19 MR. MAYER: -- (indiscernible)

20 Your Honor, as Mr. Strubeck said, we view these
21 people, not Ms. Ross' clients, they're different
22 (indiscernible)

23 THE COURT: So --

24 MR. MAYER: Mr. McKane and his group are creditors
25 of creditors.

1 THE COURT: Right. So can I -- before you go on,
2 Mr. Mayer, if I could because I want to understand because
3 everybody said that, and I don't understand it. The fact
4 that --

5 MR. MAYER: Okay.

6 THE COURT: -- Ms. Ross' client is in privity, how
7 does that make -- how does that really have any impact on
8 whether or not she should be allowed to intervene in a claim
9 objection adversary?

10 MR. MAYER: Because, Your Honor, she has a
11 contract --

12 THE COURT: Right.

13 MR. MAYER: -- directly with the debtor, and the
14 ruling that you make will affect the enforcement of her
15 contract.

16 But with respect to Mr. McKane's clients, they
17 have a contract with ERCOT. ERCOT has a contract with the
18 debtors. If you take a look at the Enron case that we cited
19 in our papers --

20 THE COURT: Sure.

21 MR. MAYER: -- it looks like the same issue came
22 up. Now it's not binding, it's the Southern District of New
23 York. I don't expect this Court to view that as a binding
24 precedent, but almost exactly the same issue came up. And
25 Enron cut a -- strike that. ERCOT cut a deal with Enron

1 (indiscernible)

2 THE COURT: Okay.

3 MR. MAYER: And a market participant came in and
4 said you can't do that, those are my electrons. And ERCOT
5 said, no, no, no, you have an agreement with me --

6 THE COURT: Right.

7 MR. MAYER: -- I have an agreement with the
8 debtor, it's my agreement to administer, and I get to do
9 this without talking to you.

10 Now, in terms of whether this is a good idea or
11 not, I would urge that you think about, in my view, what
12 you're setting up the case to do because I think this is
13 going to end up being terribly unfortunate. There is no way
14 for majorities to bind creditors of a creditor. You're
15 going to have 20 individual voices. When you say these
16 people should be involved in settlement discussions, what do
17 we need to cut a deal? Do we need 1 person? Do we need 20
18 persons? Do we need a majority? What about the people
19 whose claims against ERCOT haven't been established? Some
20 of these people have claims for services, or more
21 accurately, have received payment for services that they
22 didn't actually render, and ERCOT is seeking to get the
23 money back from them.

24 The fact that these people even show up and say,
25 hi, I have a claim, they have a contract with ERCOT, they

1 say. They have performed under that contract with ERCOT,
2 they say. But all of this is one step removed from this
3 Court. And there is no way -- if you'll pardon my saying
4 so, creditors of a creditor, with respect to their claims
5 against ERCOT, I don't think you have jurisdiction over
6 that.

7 THE COURT: Sure. But they filed --

8 MR. MAYER: And what then --

9 THE COURT: They filed proofs of claim in this
10 court, and no one has objected to them.

11 MR. MAYER: Yet, Your Honor. I think we've been a
12 little busy. But if the question is we need to have
13 objections to claims filed by creditors of creditors, the
14 committee will stand ready to file such objections.

15 THE COURT: So, Mr. Mayer, let me step back
16 because I'm not sure you understand where I'm headed.

17 MR. MAYER: Okay.

18 THE COURT: So, one, let me go back and, I think,
19 address what you -- what your sort of preeminent question
20 was: How many people do you need to negotiate a settlement.
21 If Mr. Parker tells you that he can cut a deal on behalf of
22 ERCOT, then you only need one.

23 But if, as I believe, he has far less latitude
24 than perhaps you think he does because of a whole host of
25 issues that really haven't shown up yet, what you do have

1 the ability to do, in my mind, is to pick off creditors of a
2 creditor and have ERCOT acknowledge the reduction of that
3 liability, so it starts to narrow the ERCOT exposure. Now
4 it does require ERCOT to say, you know, okay, I agree. But
5 it's awfully hard to say, if someone reaches a deal that
6 says that deals with our liability, ERCOT, I don't know how
7 ERCOT says no to that because it's better off for the entire
8 system. That's all I was saying.

9 It's not that you have to include anybody in a
10 settlement discussion. You don't even have to negotiate, if
11 you don't want to.

12 MR. MAYER: Let me try this again, Your Honor.

13 THE COURT: Okay.

14 MR. MAYER: And again, the folks from ERCOT can
15 correct me if I'm wrong. But let us assume Mr. McKane comes
16 to the debtor and he says have I got a deal for you, I'm
17 going to cut my claim in half.

18 THE COURT: Uh-huh.

19 MR. MAYER: Does that affect ERCOT's claim in the
20 slightest? My understanding is that it does not, not at
21 all.

22 THE COURT: No. But if they --

23 MR. MAYER: All that's happened is that somebody
24 who didn't have a claim at all just got paid 50 cent.

25 THE COURT: No. See, I think that you're wrong

1 because part of the deal would necessarily involve ERCOT
2 acknowledging -- or part of the deal would be Mr. McKane
3 acknowledging that ERCOT had no further liability to it for
4 that claim, so ERCOT's exposure goes down by the full amount
5 of Mr. McKane's claim.

6 MR. MAYER: I can't -- I cannot obviously say with
7 certainty that that won't happen. But it is not my
8 understanding that, when these folks seek to intervene, they
9 are contemplating reducing their claims against ERCOT, and
10 I'll leave it at that.

11 THE COURT: I'm sure that's on the table.

12 UNIDENTIFIED: Your Honor?

13 THE COURT: Yes. If I don't get to Ms. Ross,
14 she's going to explode. So, Ms. Ross, go ahead, please.

15 MS. ROSS: Oh, I'm sorry, Your Honor. I did
16 voluntarily keep my remarks brief, so that I could just try
17 to follow up after I heard the argument.

18 Your Honor, with all due respect to Mr. Mayer and
19 to Mr. Strubeck, I think the big problem in this case is
20 that we have a committee that does not contain market
21 participants. It doesn't even contain people like me, when
22 my poor client tried to get on the committee and couldn't.
23 That's the first problem. And therefore, there's nobody for
24 them to talk to. The case has been sitting for six months,
25 with all due respect. That's what the problem in this case

1 is.

2 We need to get the people who have -- whose oxes
3 are going to be gored in this case. And it's seeming that
4 my client agrees to the conditions the Court has suggested.
5 My suggestion would be that the intervention be permitted.

6 With respect to Mr. Strubeck, I've known Mr.
7 Strubeck for 30 years, but I didn't know he couldn't count
8 because he says there were 24 people trying to intervene.
9 Now (indiscernible) I want to -- I want to count for a
10 minute because here's the thing: There were 14 co-op
11 members who asked to intervene, and they've been allowed in,
12 so that's 14 --

13 THE COURT: Well, they haven't been allowed in
14 yet.

15 MS. ROSS: Well, they're -- the debtors agreed to
16 them. And let's look how that's going to look on appeal.
17 They let them in, they let the committee in, and they let
18 Mr. Strubeck assert his claim. And the Fifth Circuit is
19 going to say, well, wait a minute, I don't understand this
20 (indiscernible) that is standing in the way of all of this
21 is ERCOT. And you just heard, Judge, that ERCOT cannot
22 settle this matter.

23 So it's a risk of snatching defeat from the jaws
24 of victory. I would strongly recommend that the
25 intervention be permitted, where I do still have to speak to

1 my client. And I don't -- one of the questions I've got for
2 the Court is: Are you going to impose the other
3 restrictions that the debtor tried to impose on us?

4 THE COURT: No.

5 MS. ROSS: Because that (indiscernible) that's a
6 huge --

7 THE COURT: Well, no, I'm not because what I'm
8 going to tell you is, under -- it would take -- it would
9 take something that I can't think of to change the
10 scheduling order. And you know, you're going to live with
11 what's there. That's the --

12 MS. ROSS: Yes, we are.

13 THE COURT: That's the decision you made.

14 MS. ROSS: (Indiscernible) allowed in.

15 THE COURT: Uh-huh.

16 MS. ROSS: I get it.

17 THE COURT: Let me first -- Mr. Ruzinsky, you're
18 back on just because I -- so that I know where your -- I
19 know where your client is. Where would your client like to
20 be?

21 MR. RUZINSKY: Your Honor, I appreciate the Court
22 giving me an opportunity to visit with my client. I did so
23 and we heard the Court, and my client did, too, loud and
24 clear. And with our single issue, we're going to take the
25 Court up on its invitation not to intervene. So we will

1 pass on the intervention and appreciate the input from the
2 Court.

3 THE COURT: So if you would simply do a very short
4 order that just says that your request to intervene is
5 withdrawn and that you need determination in the adversary
6 regarding the applicability of 503(b)(9) is not binding on
7 your client.

8 MR. RUZINSKY: I will do so, Your Honor. Thank
9 you.

10 THE COURT: All right. Obviously, pass that by
11 the committee and the debtor just to approve as to form
12 only.

13 MR. RUZINSKY: Yes, sir.

14 THE COURT: All right. And if you wish to go,
15 you're certainly welcome to go, but you can also stay if
16 you'd like.

17 MR. RUZINSKY: (Indiscernible)

18 THE COURT: All right.

19 MR. RUZINSKY: Thank you, Judge.

20 THE COURT: All right.

21 MR. ROSENTHAL: Your Honor?

22 THE COURT: Yes.

23 MR. ROSENTHAL: Can you hear me?

24 THE COURT: Yes.

25 MR. ROSENTHAL: Michael Rosenthal on behalf of

1 Luminant Energy and Exelon.

2 Your Honor, I think you were going to take up our
3 motion next. But we do have an interest in what you're
4 discussing right now --

5 THE COURT: Uh-huh.

6 MR. ROSENTHAL: -- because we're the other side of
7 the argument that you just made and that Ms. Ross just made,
8 we're the -- we're one of the parties whose ox may be gored
9 by the Court's decision, for example, to disallow a portion
10 of the ERCOT claim, in the event that they come back with a
11 default (indiscernible) so all the arguments that you have
12 been -- you know, you have been discussing with the parties
13 about why intervention may be appropriate under -- I
14 understand you're talking about a permissive intervention
15 standard -- would apply, I think, to Luminant and Exelon, as
16 well. So we can either discuss that now or we can discuss
17 it when you get to our motion.

18 THE COURT: If you want to throw something out --
19 because, number one, Mr. Parker is in a position that I'm
20 not sure he anticipated, and so he's got a lot to process
21 through, and so knowing what you're going to say will help
22 him decide how he wants to react when I get to him.

23 MR. PARKER: Your Honor, this is Mr. Parker. I'm
24 happy to let counsel continue and I'll respond to everybody.

25 THE COURT: Sure. All right. Go ahead.

1 MR. ROSENTHAL: So, Your Honor, we actually think
2 we have a -- we have a mandatory right to intervene, just
3 sticking with your permissive intervention. You know, our
4 issues relate --

5 OPERATOR: Our system will end this conference in
6 five minutes. To extend this call for one hour, please
7 enter the moderator PIN now.

8 MR. ROSENTHAL: (Indiscernible)

9 OPERATOR: Your conference has been extended for
10 60 minutes.

11 MR. ROSENTHAL: (Indiscernible) as to whether, in
12 fact, the disallowance of the claim would still entitle
13 ERCOT to issue default notices to parties such as Luminant
14 and Exelon --

15 THE COURT: Uh-huh.

16 MR. ROSENTHAL: -- notwithstanding the fact that
17 you would have said in your ruling that they have no --
18 ERCOT has no claims against Brazos. How then to have a
19 claim against other market participants?

20 THE COURT: And just so --

21 MR. ROSENTHAL: So (indiscernible)

22 THE COURT: And just so we're clear, Mr. Rosenthal
23 -- because I wanted to make this point earlier -- is that
24 the answer that comes out of the claim objection and the
25 adversary is that the claim against the estate is X, and

1 that can be different.

2 MR. ROSENTHAL: Correct.

3 THE COURT: Okay.

4 MR. ROSENTHAL: But the claim against the -- we've
5 asserted a claim against the estate based the potential
6 default (indiscernible) so one of our arguments as to
7 intervention is that it would lead to -- you know, it would
8 actually simplify the process because the Court would be
9 deciding.

10 Your second condition, I think, was: Will we be
11 bound as to our claims? And I think the answer is yes,
12 where we could intervene, that you would be deciding whether
13 (indiscernible) in the same time, whether ERCOT has a claim
14 and whether there is any claim over by Luminant and Exelon.

15 And I will say to Your Honor -- I will say to Your
16 Honor that, if we are allowed to intervene, the discussions
17 that you were talking about -- if, for example, Calpine and
18 NRG and ERCOT related to whether there's a deal, whether
19 they will agree that some portion of the amounts they are
20 owed will not -- will -- could be reduced, it seems to me
21 that Luminant and Exelon should be part of those
22 discussions. They're the other side of the same coin.

23 THE COURT: All right. Thank you.

24 Anyone else before I get to Mr. Parker? Mr.
25 Haitz, I see you talking, but -- oh, okay. So it wasn't for

1 me. Got it. All right.

2 All right. Mr. Parker?

3 MR. MCKANE: Your Honor, can I just do one quick
4 record correction?

5 THE COURT: Of course.

6 MR. MCKANE: Your Honor, both Mr. Strubeck and Mr.
7 Mayer went out of their way to kind of position us as just a
8 short-pay claimant; in other words, in Mr. Mayer's role, a
9 creditor of a creditor; and, therefore, not a claim against
10 the estate. Calpine is both.

11 THE COURT: I --

12 MR. MCKANE: Calpine has asserted a Proof of Claim
13 on the short pay, and Calpine has a direct claim against the
14 debtor under a contract that did not flow through ERCOT. I
15 mean, it's just -- you know, like we're in either way. I
16 don't think privity is the dividing line here. I understand
17 exactly where Your Honor is. And you know, the way you've
18 characterized some of the discussions and the ability to
19 have people who actually have an economic interest here I
20 think is the driver to -- you know, I do (indiscernible)
21 including Mr. Strubeck. This is the key to the case. I
22 think it's critical and we're prepared to move forward.

23 THE COURT: All right.

24 MR. MCKANE: At least Calpine is prepared to move
25 forward with those conditions.

1 THE COURT: I got it. All right.

2 Mr. Parker?

3 MR. PARKER: Yes, Your Honor. My turn?

4 THE COURT: Yes, sir.

5 MR. PARKER: Excellent. Thank you.

6 I'm going to do my best to keep this brief, Your
7 Honor. We've all been here for five and a half hours now.
8 So I'm not going to show the 30 slides I had prepared, I've
9 pared it down quite a bit.

10 THE COURT: Did you --

11 MR. PARKER: (Indiscernible) in terms of market --
12 oh, I'm sorry. Yes, Your Honor.

13 THE COURT: Do you want presenter control to
14 someone?

15 MR. PARKER: Yes, please, Judge. Caitlin Roberts
16 (phonetic).

17 THE COURT: Caitlin Roberts.

18 MR. PARKER: Thank you.

19 THE COURT: Caitlin -- Caitlin with a C?

20 MR. PARKER: Yes, sir.

21 THE COURT: All right. Let me just -- so I can
22 pay full attention, let me find her. Caitlin Roberts, there
23 she is. All right. She has controls. My apologies.

24 MR. PARKER: Thank you, sir.

25 I'm going to take everybody in turn. I'll talk

1 about market participants, first (indiscernible) the Calpine
2 Group, as well as Luminant and Exelon, then I'll move on to
3 the co-ops.

4 THE COURT: So can --

5 MR. PARKER: Then I'll probably --

6 THE COURT: Can you -- I'm sorry. Can you flip
7 back to that? Because I've got the slide that Mr. Strubeck
8 was referencing. So you do not oppose intervening --
9 intervention from Calpine, NG, Lower Colorado, NRG. All
10 right. Thank you. I'm up with you.

11 MR. PARKER: Thank you, sir. I'll point out that,
12 as far as LCRA goes, we inadvertently omitted them in our
13 papers, but I guess we just heard they're withdrawing their
14 intervention, so this is of no moment anymore.

15 These five market participants fall into three
16 categories of folks who have a direct 503(b)(9) claim. And
17 while trying to parse through all of these potential
18 intervenors and trying to intellectually honest with
19 ourselves and with the Court about who we would agree to
20 allow in and who we didn't think had the right to be allowed
21 in, we had to figure out what separated them out.

22 With regard to these five, they have their direct
23 503(b)(9) claims. We think they have a right, under
24 mandatory intervention, to be in this case. When we talk
25 about permissive intervention later, we believe that the

1 intervenors or the potential intervenors all suffer from the
2 same issue, which is the undue prejudice that will occur as
3 a result of bringing them all in. However, as to these
4 five, ERCOT is not opposing them to be allowed in as a
5 right. I want to make that clear as we proceed.

6 MR. ROSENTHAL: Your Honor, it's Michael
7 Rosenthal. Can I just interject one second? We also -- NRG
8 -- I'm sorry. Luminant also filed a 503(b)(9) claim as a
9 portion of its claim. Does the same hold true for Luminant?

10 MR. PARKER: I'm going to get to that.

11 MR. ROSENTHAL: (Indiscernible) --

12 MR. PARKER: (Indiscernible)

13 MR. ROSENTHAL: -- talking about 503(b)(9), yeah.

14 MR. PARKER: Let's talk about Luminant and Exelon.

15 No, the -- we -- ERCOT does not believe that Luminant and
16 Exelon have the right to intervene as a right for several
17 reasons. They're only protecting their interests in a
18 number of other parallel proceedings, where a lot of these
19 same issues they seek to resolve in this case, in the his
20 adversary proceeding, are already being litigated.

21 The 503(b)(9) claim that was just referred to that
22 Luminant has, and Exelon does not, is not the subject of
23 their motion to intervene or the complaint that they have on
24 file. So they drew a line in the sand when they started
25 talking about (indiscernible) procedures (indiscernible) the

1 market. That's the issue on which they want to intervene.
2 So there is a clear distinction between Luminant and Exelon
3 and the other five that were on the other slide.

4 And with regard to the co-ops, let's talk about
5 them next. The co-ops' objective is the same as the
6 debtor's objective in this case. And just to frame the
7 issue, when it comes to the co-ops, you've got Tri-County,
8 United, CoServ, Mid-South, and the ad hoc group
9 (indiscernible) thank you. So this -- these are the groups
10 -- these are the co-ops that have sought to intervene.

11 We have the ad hoc group, which is comprised of
12 eight. They filed their one motion to intervene. Then you
13 have these four on top that filed their own intervention
14 motions. And the fact that you saw this flurry of filing
15 with these five separate motions to intervene, as well as
16 the eight (indiscernible) witness list that we saw on
17 Thursday, really highlights one of the issues we'll talk
18 about later. This notion of cooperation amongst the
19 intervenes ERCOT fears will just not happen.

20 And I'll draw a distinction. The Calpine group
21 filed one motion, they filed on exhibit list. These folks
22 filed eight exhibits lists and five motions. And so we are
23 concerned that, as this proceeds, there will be this undue
24 prejudice that the cases talk about regarding permissive
25 intervention.

1 We don't think delay is going to be a concern. I
2 think Your Honor is going to keep this all (indiscernible)
3 so there will be delay. But the undue prejudice will be the
4 real issue as we proceed. I want to talk about that a
5 little bit more.

6 Let's go to Slide 7, please.

7 The other issue is that, as I said earlier, the
8 co-ops are already represented. The co-ops own Brazos.
9 They admit that in the stipulation that was filed. The co-
10 ops are the (indiscernible) owners of Brazos, and they all
11 have a seat on the board of directors. And so this notion
12 that they won't have a seat at the table isn't true. They
13 have a seat at the table. They have a seat at the adults'
14 table, not even the kids' table. They get to dictate what's
15 going to happen here.

16 And frankly, it's Brazos' job to make sure their
17 co-op constituents are taken care of in this regard. And
18 you know, the 45 minutes that we've now spent hearing from
19 everybody on these various issues, again, highlights the
20 problem. There won't be one voice by the co-ops; it's going
21 to be a number of people jockeying for different positions,
22 and in a matter where they already have the relief they're
23 trying to seek.

24 If we can look at Slide 8, please, Ms. Roberts.

25 The co-ops have adopted all the same

1 (indiscernible) complaint as this claim against ERCOT. If
2 we look at the -- if we can go to 8. The member co-ops that
3 make up the ad hoc group, they adopt and incorporate each
4 cause of action and the related allegations set out in the
5 debtor's complaint. Tri-County (indiscernible) such count,
6 they rely on the factual allegations (indiscernible)
7 complaint and do not propose to add additional factual
8 allegations at this time. And then Mid-South, United, and
9 CoServ, they all say the same stuff that Brazos is saying.
10 They're already adequately represented (indiscernible)
11 jurisdiction standpoint.

12 And they also only have an economic interest. If
13 you look at Slide 9, this was the (indiscernible) case cited
14 in our papers. We hold that an economic interest alone is
15 insufficient as a legally protectable interest and
16 intervention is improper where the intervenor
17 (indiscernible) possess (indiscernible) substantive right it
18 seeks to assert in the action. And so they do have a purely
19 economic interest. They're already protected by Brazos.

20 And we talk about permissive, there's another
21 problem that they are all going to have with the way this
22 matter is going to proceed for the next six weeks, during
23 fact discovery, and thereafter.

24 Let's look at Slide 11, please.

25 Another issue that we argued in our papers and I

1 will now bring up briefly is the co-ops' lack of standing.
2 Their claims are all derivative through Brazos. There is no
3 direct privity of contract between them and ERCOT. Brazos
4 has those contracts. And if they haven't proven a contract,
5 the question is: How can they move on certain counts in the
6 complaint that are based on breach of contract? And so they
7 wholesale adopted the complaint against ERCOT without
8 parsing out which claims arguably they could bring when they
9 don't require privity. But if they just adopt those -- that
10 complaint, they have a problem on standing.

11 Let's talk about permissive intervention very
12 briefly.

13 Go to Slide 12, please.

14 This is (indiscernible) 24(b) and the United
15 States v. Texas Education case cited in our case, talking
16 about judicial economy. We brought this up and briefed it
17 quite a bit in our papers, I've raised it today several
18 times, and I think it's really the critical issue, it's
19 (b) (3), delay or prejudice.

20 In exercising its discretion, this Court
21 (indiscernible) when the intervention will unduly delay or
22 prejudice the adjudication of the original party's rights.
23 And so the original parties are Brazos and ERCOT. How will
24 allowing these parties in prejudice or delay our rights?
25 And I understand (indiscernible) the debtor (indiscernible)

1 these folks (indiscernible) from a litigation strategy
2 standpoint (indiscernible) standpoint or (indiscernible)
3 both. But there is an effect of doing that, that's going to
4 prejudice ERCOT.

5 Let's look at Slide 14, please.

6 This is what we have coming up (indiscernible)
7 laid awake thinking about it. This Friday is the parties'
8 deadline to serve any additional discovery. That's all
9 coming due on the (indiscernible) respond to it on the 23rd.
10 So we've got 5 weeks to conduct potentially 30 or more
11 depositions, depending on our agreements that we're trying
12 to work through with the debtor and the UCC. Then you've
13 got experts, rebuttal, and trial in February. This is
14 something we're trying to live and die by and meet all the
15 deadlines, and we're doing a good job of it so far. But
16 adding a whole host of intervenors could negatively impact
17 that, especially with the prejudice that will befall ERCOT.

18 And I want to briefly point out some of the issues
19 that I focused in on, on the stipulation that was entered
20 into between the debtor and the UCC and the co-ops this
21 morning at Docket 117. I'm looking at Page 5 of 11,
22 depositions, for instance. If the stipulation
23 (indiscernible) and all the intervening co-ops come in, they
24 may attend any deposition and shall have the right to
25 examine witnesses at such deposition.

1 The right to propose discovery, they're going to
2 be bound by the existing discovery and try to coordinate
3 efforts.

4 Right to file dispositive motions and briefs, it's
5 Paragraph (d) on Page 6 of 11. And this one is of great
6 concern to ERCOT. The intervening co-op members shall have
7 the right to submit briefs, including with respect to case
8 dispositive motions, to the fullest extent possible under
9 the Bankruptcy Rules, and submit joinders and other non-
10 case-dispositive (indiscernible)

11 So does that mean ERCOT is going to have to
12 respond to nine different motions for summary judgment, nine
13 different trial briefs? How is that going to play out? The
14 Court can absolutely set up guardrails to prevent that. But
15 I pleaded this issue because it's of grave concern to the
16 existing -- to -- at least from our standpoint as an
17 original party, to its ability to litigate this case without
18 undue prejudice.

19 And as I mentioned earlier, that permissive
20 intervention issue affects all of the potential intervenors.
21 But when it comes to mandatory, as I said earlier, there are
22 five discrete categories that are (indiscernible) agree to
23 allow in.

24 That's all I have, Your Honor.

25 THE COURT: Oh, I --

1 MR. PARKER: (Indiscernible)

2 THE COURT: No, thank you. I got it.

3 Let me ask. Mr. McKane, have you made any
4 progress? Are you able to give me a status report?

5 MR. MCKANE: Making a lot of progress, Your Honor.
6 You know, and I'm recognizing there are folks that are able
7 to speak with their clients. My client is on the line. I
8 have Calpine's answer. I also recognize there are other
9 folks whose clients are in transit, and so I hate to give
10 you an incomplete answer. But it may be that like we need
11 to pick this up with just a quick report in the morning.
12 And I say that just because I -- you know, the
13 (indiscernible) this hearing, the time of the day. I do
14 think that we'll have answers from every participant by
15 then. But I'll other folks (indiscernible)

16 THE COURT: Actually, here's what I'm going to do.
17 And I should have added this in. And it's -- and it -- in
18 my mind, it kind of goes without saying, but I now realized
19 I should have addressed it. There will be no intervention
20 complaints. You adopt the debtor's complaint and you are
21 bound by the debtor's complaint. We're not starting that
22 process again. And so here is what I'm going to do with
23 respect to the motions to intervene:

24 With respect to the member agreements, you know,
25 with respect to the members who have sought intervention,

1 I'm going to accept the stipulation and agreed order. It's
2 been negotiated by the debtors as -- and it's my view that
3 that has been negotiated at arm's length and is the
4 byproduct of negotiation by lawyers that I have a lot of
5 confidence in and that I respect, and so I'm going to honor
6 that agreement.

7 I am going to tell you that anybody can bring to
8 my attention that people are -- I'm going to use
9 colloquialisms -- piling on, simply talking because they
10 want to be heard. I'm expecting each of you to -- if you're
11 going to participate, that you're going to do this in an
12 efficient manner. And you certainly want to cover all the
13 issues, but fight the urge to be heard just for the sake of
14 being heard. Let's be productive and respect everyone's
15 time.

16 With respect to the other motions, Mr. Strubeck,
17 here is what I'm going to do. I am going to grant the
18 motions to intervene, to the extent that the parties that
19 are allowed to intervene agree that they will be bound by
20 any 503(b)(9) determination; that they agree that, with
21 respect to the intervening group, they are only allowed one
22 counsel per issue, in terms of being heard; and that they
23 adopt and are bound by the complaint. I don't know the
24 impact of anything else, and so I will take that up by
25 emergency motion. I would hope that I don't have to and

1 that I don't have to, you know, rethink what I've done.

2 I remain convinced that this is an opportunity to
3 actually make some progress for, again, the people who are
4 affected by this most, and those are the folks who pay their
5 electric bills every month. That's the focus, we're not
6 going to forget that. The fact that we, as legal
7 professionals -- me, included -- have to work a little bit
8 harder, that's just something we're all going to accept for
9 the greater good.

10 So, to the extent, Mr. Strubeck, that anyone who
11 filed a motion to intervene will sign on to those
12 requirements, then you can stick them in the order or you
13 can draft the order by saying, you know, anyone within the
14 next couple of days -- actually, what I'd like to do is just
15 hold that order. And if you're going to -- if you're going
16 to participate in the "intervening group," as I've defined
17 the term, you have to do that by, let's say noon on
18 Wednesday.

19 MR. MCKANE: Your Honor --

20 THE COURT: Mister -- yes?

21 MR. MCKANE: -- can I get one clarification?

22 THE COURT: Hold on just for one second. Mr.
23 Gibbs would making motions that he could not hear. Mr.
24 Gibbs? I've learned to read hand signals.

25 UNIDENTIFIED: I still can't hear.

1 THE COURT: Mr. Gibbs, are you back with us?

2 (No verbal response)

3 THE COURT: Let's assume that he's re-dialing.

4 (Pause in proceedings)

5 MR. ROSENTHAL: While he's doing that, Your Honor,
6 Michael Rosenthal for Luminant and Exelon.

7 So we would sign on to an order that Mr. Strubeck
8 would prepare, agreeing to those conditions? I think it
9 will be fine with our clients.

10 THE COURT: Okay. I'm giving you the opportunity
11 to talk through the implications because I -- and look, I
12 don't mind people being strategic about this, I've thought
13 through those issues. There will be limits to my ability to
14 tolerate manipulation and strategery -- it's a legal term --
15 so do it wisely. And remember, at the end of they day, my
16 focus is on those people who pay their electric bills every
17 month, and do not get in my way with respect to that issue.
18 That -- those people mean everything to this process, and
19 we're going to protect those folks to the extent that the
20 law says that we should.

21 All right. Mr. Gibbs, are you back with us?

22 MR. GIBBS: I am, Your Honor. I apologize. Can
23 you hear me?

24 THE COURT: I can now, and I appreciate the hand
25 signals. Mister -- I stopped Mr. McKane asking for a point

1 of clarification.

2 So, Mr. McKane, if you could, go ahead, please.

3 MR. MCKANE: Thank you, Your Honor.

4 I just wanted to confirm, since Exelon and
5 Luminant were intervening on the plaintiff's side of the V
6 and the other market participants were intervening on the
7 defendant's side of the V, that they wouldn't be compiled
8 into the same group because it's going to be pretty hard for
9 people to speak on two different sides of the V.

10 THE COURT: Yeah. Well, it's -- you'd be surprise
11 what you see. But no, you're right.

12 UNIDENTIFIED: Your Honor, we were assuming it was
13 Luminant and Exelon, and we would participate with one
14 counsel only (indiscernible) the issue.

15 THE COURT: Yeah, that wasn't --

16 MS. ROSS: (Indiscernible)

17 THE COURT: That was not -- and so we're going to
18 come back around to that. That was -- that had escaped me
19 and I should have taken better notes. So let me carve out
20 Exelon and Luminant for just a second.

21 So, Ms. Ross, did you have -- so, as I deal with
22 Mr. McKane's issue, did you have a question or comment with
23 respect to that issue?

24 MS. ROSS: Your Honor, no. I had one additional
25 issue that I was trying to understand the -- I was trying to

1 understand what the Court meant by being aligned. There --
2 for example, among our group, we're all going to be aligned
3 on all issues, but I'm the only one that's probably going to
4 care about the ancillary services. So I'm assuming that one
5 person per legal issue.

6 THE COURT: So is there an ancillary service -- is
7 there an ancillary service component of the ERCOT claim?

8 MS. ROSS: Yes.

9 THE COURT: And you've been able to pull that out
10 and quantify it.

11 UNIDENTIFIED: Yes, Your Honor.

12 MS. ROSS: They told me it wasn't very much, but
13 they had quantified it, yes.

14 THE COURT: All right. Then my view is, is that,
15 on that particular issue, no one else is going to
16 particularly care, at least in this group, except for you.
17 So my guess is you would probably be the person on that
18 issue.

19 THE COURT: Look, here's -- and I want to make
20 this very clear. We're all going to have to be a bit
21 flexible, is --

22 MS. ROSS: Okay.

23 THE COURT: The goal is not to have eight lawyers
24 all take a shot on the same issue because we're not going to
25 -- we're not going to repeat this. We're going to -- I'm

1 giving you the opportunity, quite frankly, probably against
2 my better judgment because, again, I'm focused on dollars
3 and who's actually affected. I understand what the statute
4 says, but I also understand the dynamics of the case that
5 we've got. And you know, don't abuse that privilege. I --
6 for -- on issues, I want to see good presentation of
7 evidence and testimony, but -- and I don't want people
8 coming behind, again, lining up, just to take -- just to
9 take and repeat the things that have already been asked. So
10 I know most of you well enough to know that you understand
11 how this should be conducted.

12 All right. So anything else, except for Mr.
13 Rosenthal's issues? Mr. Gibbs.

14 MR. GIBBS: Your Honor, thank you. While I was
15 muted or I lost my phone, I was going to ask Your Honor or
16 just raise one issue for Your Honor to consider and think
17 about how to resolve.

18 We fully expect and are willing to, obviously,
19 abide by the stipulated order in this case, including the
20 pretrial deadlines and the trial setting. (Indiscernible)
21 the stipulation, which Your Honor has approved, it would be
22 (indiscernible) for our intervention because (indiscernible)

23 There is one concern that I want to flag. The
24 deadline (indiscernible) pointed out for certain written
25 discovery is this Friday. Under the stipulation -- I think

1 it's in Paragraph 2(c) -- the member co-ops cannot propound
2 written discovery unless we've either gotten the consent of
3 all parties, or we've asked for permission (indiscernible)
4 seek it on an expedited basis. We haven't seen what written
5 discovery has been propounded by the existing plaintiffs
6 against ERCOT, so we have no reason yet to have an opinion
7 whether that was sufficient or whether we think we need to
8 add any addition written discovery requests.

9 I highly doubt that all existing parties, which
10 would include ERCOT, will agree with us that today is
11 Monday, so I'm fully expecting that, once we see this and if
12 we decide we may need to ask Your Honor to consider our
13 request to be allowed to propound additional written
14 discovery. We may need a few minutes of your time on
15 Friday, so that we can get a ruling. And if we're allowed
16 to do that and we can be in compliance with discovery
17 (indiscernible) scheduling order.

18 I don't think it's the case that we're going to be
19 asking Your Honor. I just wanted to flag it that
20 (indiscernible) request to come in on the time line that
21 this train is running on, we may need to ask for a little
22 bit of your time. And we'd ask Your Honor to encourage --

23 THE COURT: I --

24 MR. GIBBS: -- the debtor to (indiscernible) a
25 list of the topics that they've asked for written discovery

1 on, so we can make a quick decision.

2 THE COURT: So, Mr. Gibbs, I will certainly give
3 you time on Friday. The only requirement is whatever
4 pleading you file, you attach the discovery that you want
5 because that's -- I'm going to want to see it and I'm going
6 to want to read it and understand why.

7 MR. GIBBS: And as I said, I think it's fair more
8 likely that you won't see us, won't see anything from us, or
9 have us in your court on Friday. But we do need to see what
10 the debtor has propounded (indiscernible) so that we can
11 make an independent decision if we need to ask for anything
12 else.

13 THE COURT: I got it. All right.

14 So anything --

15 MR. EPPICH: Your Honor --

16 THE COURT: -- before I go back to Mr. Rosenthal.

17 MR. EPPICH: Your Honor, this is Josh Eppich for
18 United.

19 THE COURT: Yes.

20 MR. EPPICH: (indiscernible) on behalf of Mr.
21 Gibbs comment. As far as United is concerned, obviously
22 (indiscernible) Mr. Gibbs' request. But so the Court
23 understands, from United's perspective, part of that issue
24 stems from the fact that we were subpoenaed by ERCOT with a
25 fairly large discovery request just the end of last week.

1 And so, as we're going through those documents, that all
2 sort of depends whether or not we want to propound any
3 written discovery on that issue -- on those issues raised.

4 THE COURT: Okay. So no more piggybacking on
5 anybody. If you've got an issue, you raise it. And
6 otherwise, you know you go do your thing.

7 MR. PARKER: (Indiscernible) Your Honor.

8 THE COURT: Mr. Parker?

9 MR. PARKER: I've got an issue, sir. Initial
10 disclosures on -- to be filed by all the new intervenors, do
11 we need to set a deadline for those?

12 THE COURT: I'm going to let you all talk through
13 all of those issues. And you know, the more I have to
14 become involved, the more -- just the harder I'm going to
15 be. So I'm going to let you all talk about those things.
16 And if you decide that I need to be involved, then I will be
17 involved. Okay?

18 MR. PARKER: Yes, sir.

19 THE COURT: All right. Anything else before we
20 come back to Mr. Rosenthal's issues?

21 (No verbal response)

22 THE COURT: All right. Mr. Rosenthal, number one,
23 my apologies to you for not recognizing that you were
24 different -- that you were situated very differently. As I
25 think about this, I need to understand why you ought to be

1 involved in this at all. This is a claim objection. This
2 claim is not asserted against you. Tell me why.

3 MR. ROSENTHAL: Your Honor, we think that we have,
4 to the extent that this claim is disallowed and ERCOT
5 continues to assert (indiscernible) charges based on the
6 amount that you've disallowed, that we have potential claims
7 against Brazos for the portion of that that relates to
8 Brazos that we pay.

9 THE COURT: All right. Is that --

10 MR. ROSENTHAL: We are, in that case, the money,
11 if you will, for the payment of an amount that you had told
12 ERCOT that Brazos doesn't have to pay it. And we think that
13 that is -- that that is something that you need to decide
14 and it's simpler for you to decide it -- you know, to decide
15 it now.

16 We also think, Your Honor, that some of the
17 arguments that are going to be made here are the same
18 arguments that have been made in other courts. We want you
19 to hear what those arguments are, so that we can try to
20 ensure that there is some consistency in the presentation
21 and in your decision and we're not -- you know, we're not
22 left with inconsistent positions. So those are the two
23 basic reasons.

24 I will tell you, Your Honor, I think your -- sorry
25 I was off camera when I made my original speech. But I

1 think, Your Honor, that, if you're inclined to let us in,
2 your conditions, they need to be modified a little bit for
3 Luminant and Exelon because we would not intend to pursue
4 and raise the 503(b)(9) issues.

5 THE COURT: All right.

6 MR. ROSENTHAL: Those are issues that could be
7 covered by the market participant group and by ERCOT. But
8 you know, we would agree that we would be bound -- as I said
9 before, that we would be bound by your decision with respect
10 to what claims we might have over against Brazos. So you
11 wouldn't have to litigate those issues.

12 THE COURT: All right. All right. On that basis,
13 the motion to intervene filed by Luminant Energy and Exelon
14 Generation Company, LLC is denied.

15 Mr. Strubeck, I'm going to look to you to provide
16 a series of orders that accomplish everything we've done.
17 My guess is -- I had hoped to have this all in one order.
18 It's clear to me now that that's not possible, so I will
19 look for a series of orders. If you would simply let
20 chambers know as they are uploaded. No need to hold them
21 all until you get them all done, just upload them as they
22 are completed.

23 And Mr. Strubeck, you've got me muted.

24 MR. STRUBECK: Thank you, Judge. You're also a
25 pretty good lip-reader, in addition to being hand signal

1 interpreter.

2 Judge, I think that I may want to see the
3 transcript on a portion of what you had to say before I
4 prepare the order. And I'll tell you, one of the reasons
5 for that is that -- you may have noticed, and I'm going to
6 refer to Docket Number 117 now, which is the stipulation we
7 had with the members.

8 THE COURT: Right.

9 MR. STRUBECK: We had what I'll refer to as a --
10 kind of a most favored nations clause in that, so that, if
11 you let other parties intervene on less restrictive terms
12 than what we had negotiated in the stipulation, then the
13 members had the ability to be involved without those
14 restrictions, as well. I just am going to have to kind of
15 think through it and sort through it. And we may -- we'll
16 do our best not to have to come back to you with -- for
17 additional guidance, but that's one of the things that I
18 want to make sure I've thought through and properly
19 addressed.

20 THE COURT: Certainly. I would be very happy if
21 the members wanted to accept that they would have one
22 representative only with respect to each issue, and that,
23 along with the two other conditions, be the limitation.
24 That would be just fine with me. But I'll leave you to work
25 your way through that.

1 MR. STRUBECK: Well, I was actually going to
2 suggest that, but I'm going to have to have a discussion
3 with the members around that. And I will, and hopefully we
4 won't need to come back to you with that at least.

5 THE COURT: So let me ask. Mr. Gibbs, if you are
6 unable to work your way through the issues that you've got
7 with respect to discovery, if I could ask you to sort of say
8 let's set Thursday at noon as a deadline; and, if you don't
9 have a consensus, then if you would talk to everyone and
10 then reach out to Mr. Alonzo for some time on Friday, with
11 everybody's schedule and be as respectful as you can, then I
12 will -- you know, I'll do my best to accommodate that Friday
13 request. I will find time for you on Friday. I just -- you
14 know, I don't know what you're going to -- what you're going
15 to ask for.

16 MR. GIBBS: Will do, Your Honor.

17 THE COURT: All right. Thank you.

18 Anything else, folks, that we need to talk about?

19 MR. STRUBECK: We do, very briefly, Your Honor.
20 And I'm trying to get through this just as quickly as
21 everybody else is. We actually had two other matters on the
22 docket. And one of them is now moot, in connection to how -
23 - the debtors' requested, also, that the committee's request
24 for leave for filing a summary judgment motion on Count 1 --

25 THE COURT: Oh, totally --